

VOL 1 of 1

COURT OF CRIMINAL APPEALS NO.

CR 04-2042

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY **COUNTY, ALABAMA**

CIRCUIT COURT NO CV 2005-652

CIRCUIT JUDGE WILLIAM SHASHY

Type of Conviction/ Order Appealed From:

PETITION FOR WRIT OF CERTIORARI

Sentence Imposed:

Defendant Indigent:

☒ YES ☐ NO

JAMES E. BODY (AIS# 144883)

NAME OF APPELLANT

PRO SE

(Appellant's Attorney)

(Telephone No.)

Easterling Correctional Facility - 200 Wallace Dr.

(Address)

Clio

AL

36017-2615

(City)

(State)

(Zip Code)

Al. Board of Pardons & Paroles

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter

name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

EXHIBIT

1

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AVSO351

CV 2005 000652.00

JUDGE: WILLIAM A. SHASHY

ALABAMA JUDICIAL DATA CENTER
CASE ACTION SUMMARY
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

JAMES EDWARD BODY VS PARDONS & PAROLE OF AL
FILED: 03/10/2005 TYPE: PAROLE HOLD

TYPE TRIAL: NON-JURY TRACK:

DATE1: 05/23/2005 CA: DISM W/O PREJ CA DATE: 07/01/2005
DATE2: 06/30/2005 AMT: \$.00 PAYMENT:
DATE3:

PLAINTIFF 001: BODY JAMES EDWARD
AIS 144883
200 WALLACE DR
CLIO, AL 36017-2615
PHONE: (334)000-0000

ATTORNEY: *** PRO SE ***

ENTERED: 03/10/2005 ISSUED:

TYPE:

SERVED: ANSWERED:

JUDGEMENT: 06/24/2005

DEFENDANT 001: PARDONS & PAROLE BOARD STATE OF ALABAMA

* GREGORY O GRIFFIN

ATTORNEY: GRIFFIN GREGORY O

500 MONROE ST

GRI026

SIRMON STEVEN M

MONTGOMERY, AL 36130-0000

PHONE: (334)000-0000

ENTERED: 03/10/2005 ISSUED: 04/11/2005 TYPE: SHERIFF

SERVED: 04/13/2005 ANSWERED: 05/13/2005 JUDGEMENT: 06/24/2005

03/10/2005 FILED THIS DATE: 03/10/2005 (AV01)

03/10/2005 ASSIGNED TO JUDGE: WILLIAM A. SHASHY (AV01)

03/10/2005 CASE ASSIGNED STATUS OF: ACTIVE (AV01)

03/10/2005 BENCH/NON-JURY TRIAL REQUESTED (AV01)

03/10/2005 ORIGIN: INITIAL FILING (AV01)

03/10/2005 BODY JAMES EDWARD ADDED AS C001 (AV02)

03/10/2005 LISTED AS ATTORNEY FOR C001: PRO SE (AV02)

03/10/2005 PARDONS & PAROLE BOARD STATE OF ALABAMA ADDED AS D

03/10/2005 LISTED AS ATTORNEY FOR D001: (AV02)

03/10/2005 HARDSHIP AFF FILED

04/06/2005 SET FOR: TRIAL - BENCH ON 05/23/2005 AT 0900A

04/11/2005 SHERIFF ISSUED: 04/11/2005 TO D001 (AV02)

04/21/2005 SERVICE OF SERVED PERSON ON 04/13/2005 FOR D001

05/16/2005 LISTED AS ATTORNEY FOR D001: GRIFFIN GREGORY O

05/16/2005 LISTED AS ATTORNEY FOR D001: SIRMON STEVEN M (AV02)

05/16/2005 ANSWER OF MOTION DISMIS ON 05/13/2005 FOR D001

05/17/2005 PLTF APP TO CLERK FOR ENTRY OF DEFAULT &

05/17/2005 ...SUPPORTING AFFIDAVIT

07/11/2005

CV 2005 000652.00

ALABAMA JUDICIAL DATA CENTER
CASE ACTION SUMMARY
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

JAMES EDWARD BODY VS PARDONS & PAROLE OF AL
FILED: 03/10/2005 TYPE: PAROLE HOLD

TYPE TRIAL: NON-JURY TRACK:

DATE1: 05/23/2005 CA: DISM W/O PREJ CA DATE: 07/01/2005
DATE2: 06/30/2005 AMT: \$.00 PAYMENT:
DATE3: *****

05/26/2005 PLTFS OBJECTION & MOTION FOR IMMEDIATE HEARING

05/26/2005 ...REQUESTED

05/27/2005 SET FOR: HEARING ON 06/30/2005 AT 0130P (AV01)

06/14/2005 PARDONS & PAROLE'S MO TO QUASH SUBP

06/21/2005 ORDER GRANTING PARDONS & PAROLES MO TO QUASH

06/21/2005 ...SUBP

06/27/2005 OBJECTION & REQUEST FOR IMMEDIATE HEARING

07/07/2005 CASE ASSIGNED STATUS OF: DISPOSED (AV01)

07/07/2005 COURT ACTION JUDGE: WILLIAM A. SHASHY (AV01)

07/07/2005 DISPOSED ON: 06/24/2005 BY (JUDG/PLEADINGS) (AV01)

07/07/2005 C001 DISPOSED BY (JUDG/PLEADINGS) ON 06/24/2005

07/07/2005 D001 DISPOSED BY (JUDG/PLEADINGS) ON 06/24/2005

07/07/2005 DISPOSED ON: 07/01/2005 BY (DISM W/O PREJ) (AV01)

07/11/2005 APPEALED ON: 06/29/2005 IN COURT OF CRIMINAL APPEAL w/out Forms

07/11/05 Appl. Transmittal To Crm. Appls, AG, DA, Court Reporters &
DEF w/ Forms

7-14-05 Forms Filed

3

CV05-652

State of Alabama Unified Judicial System Form ARCivP-93 Rev. 5/99	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Case Number <div style="border: 1px solid black; padding: 2px;"> CV </div> Date of Filing: Month Day Year
GENERAL INFORMATION		
IN THE CIRCUIT COURT OF <u>MONTGOMERY</u> COUNTY, ALABAMA (Name of County)		
<u>JAMES EDWARD BODY</u> v. <u>ALABAMA BOARD OF PAROLE & PARDONS</u> Plaintiff Defendant		
First Plaintiff <input type="checkbox"/> Business <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other	First Defendant <input type="checkbox"/> Business <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Government <input type="checkbox"/> Other	
NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:		
TORTS: PERSONAL INJURY <input type="checkbox"/> WDEA - Wrongful Death <input type="checkbox"/> TONG - Negligence: General <input type="checkbox"/> TOMV - Negligence: Motor Vehicle <input type="checkbox"/> TOWA - Wantonness <input type="checkbox"/> TOPL - Product Liability/AEMLD <input type="checkbox"/> TOMM - Malpractice-Medical <input type="checkbox"/> TOLM - Malpractice-Legal <input type="checkbox"/> TOOM - Malpractice-Other <input type="checkbox"/> TBFM - Fraud/Bad Faith/Misrepresentation <input checked="" type="checkbox"/> TOXX - Other: <u>PAROLE HOLD.</u>	OTHER CIVIL FILINGS (cont'd) <input type="checkbox"/> MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve <input checked="" type="checkbox"/> CVRT - Civil Rights <input type="checkbox"/> COND - Condemnation/Eminent Domain/Right-of-Way <input type="checkbox"/> CTMP - Contempt of Court <input type="checkbox"/> CONT - Contract/Ejectment/Writ of Seizure <input type="checkbox"/> TOCN - Conversion <input type="checkbox"/> EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction <input type="checkbox"/> Election Contest/Quiet Title/Sale For Division <input type="checkbox"/> CVUD - Eviction Appeal/Unlawful Detainer <input type="checkbox"/> FORJ - Foreign Judgment <input type="checkbox"/> FORF - Fruits of Crime Forfeiture <input type="checkbox"/> MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition <input type="checkbox"/> PFAB - Protection From Abuse <input type="checkbox"/> FELA - Railroad/Seaman (FELA) <input type="checkbox"/> RPRO - Real Property <input type="checkbox"/> WTEG - Will/Trust/Estate/Guardianship/Conservatorship <input type="checkbox"/> COMP - Workers' Compensation <input type="checkbox"/> CVXX - Miscellaneous Circuit Civil Case	
TORTS: PROPERTY INJURY <input type="checkbox"/> TOPE - Personal Property <input type="checkbox"/> TORE - Real Property OTHER CIVIL FILINGS <input type="checkbox"/> ABAN - Abandoned Automobile <input type="checkbox"/> ACCT - Account & Nonmortgage <input type="checkbox"/> APAA - Administrative Agency Appeal <input type="checkbox"/> ADPA - Administrative Procedure Act <input type="checkbox"/> ANPS - Adults in Need of Protective Services	<div style="text-align: right; transform: rotate(90deg);"> FILED CIRCUIT COURT OF MONTGOMERY COUNTY 2005 MAR 10 AM 10:46 </div>	
ORIGIN (check one): F <input checked="" type="checkbox"/> INITIAL FILING A <input type="checkbox"/> APPEAL FROM DISTRICT COURT O <input type="checkbox"/> OTHER: R <input type="checkbox"/> REMANDED T <input type="checkbox"/> TRANSFERRED FROM OTHER CIRCUIT COURT		
HAS JURY TRIAL BEEN DEMANDED? <input type="checkbox"/> YES <input type="checkbox"/> NO Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)		
RELIEF REQUESTED: <input type="checkbox"/> MONETARY AWARD REQUESTED <input checked="" type="checkbox"/> NO MONETARY AWARD REQUESTED		
ATTORNEY CODE: Date _____ Signature of Attorney/Party filing this form <u>James E. Body</u>		
MEDIATION REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNDECIDED		

4

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALABAMA,

JAMES EDWARD BODY
Petitioner

v.

STATE OF ALABAMA
BOARD OF PARDONS & PAROLE
RESPONDENTS

CASE NO. ~~CV-DS-428~~
TO BE ASSIGNED BY CLERK

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 MAR 10 AM 10:52

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 FEB 16 PM 1:48

PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF MONTGOMERY COUNTY ALABAMA

COMES NOW THE PETITIONER JAMES BODY, AND PETITIONS THIS HONORABLE COURT
FOR A WRIT OF CERTIORARI IN THE ABOVE STYLED CASE.

THE PETITIONER QUESTIONS THE PROCEDURAL DUE PROCESS, JUDGMENT, AND FACT
FINDING OF THE RESPONDENTS, STATE OF ALABAMA BOARD OF PARDONS AND PAROLE
WHERE IN THE BOARDS ORDERED THE PETITIONER'S PAROLE REVOKED ON
MAY 14, 2003.

OR HE COULD HAVE BEEN REINSTATED AFTER HE WAS PROVEN INNOCENT OF THE
ALLEGED VIOLATIONS.

THE PETITIONER RESPECTFULLY REQUEST THAT AFTER A PRELIMINARY
EXAMINATION, THE WRIT OF CERTIORARI BE GRANTED, AND THAT THIS COURT PROCEED
UNDER THE LAWS AND RULES GOVERNING THE MATTERS COMPLAINED OF AND TO
REVERSE THE JUDGMENT OF THE BOARD OF PARDONS AND PAROLE.

S

JURISDICTIONAL STATEMENT

A PETITION FOR A WRIT OF CERTIORARI FILED IN THE CIRCUIT COURT IS THE CORRECT METHOD TO CHALLENGE AN ADMINISTRATIVE BOARD'S RULINGS. IN THE ABSENCE OF THE RIGHT TO APPEAL, OR OTHER ADEQUATE REMEDY. THE WRIT OF CERTIORARI LIES TO REVIEW THE RULINGS OF AN ADMINISTRATIVE BOARD OR COMMISSION. See; ELLARD V. STATE 474 So. 2d 743, 748 (AL.CR.APP. 1984).

VENUE OF ACTION

ALL ACTIONS WHERE THE PRISON SYSTEM OR THE STATE ON ACCOUNT OF THE PRISON SYSTEM IS AN INTERESTED PARTY MUST BE COMMENCED IN MONTGOMERY COUNTY IN THE COURT HAVING JURISDICTION OF THE AMOUNT INVOLVED.

ISSUE FOR REVIEW

(1). THE FINAL HEARING COURT DENIED THE PETITIONER HIS CONSTITUTIONAL RIGHT GUARANTEED HIM BY THE UNITED STATES CONSTITUTIONAL 14th AMENDMENT. THE PETITIONER WAS NEVER ADVISED OF HIS RIGHTS UNDER THE DUE PROCESS CLAUSE: (P.B. FORM 104 "Rev. 9-99")

(2) AT THE PETITIONER'S FINAL HEARING THE PETITIONER WAS NEVER GIVEN THE OPPORTUNITY FOR EFFECTIVE REBUTAL OF THE ALLEGATIONS. (DOCUMENTED EVIDENCE).

(3). AT THE PETITIONER'S FINAL HEARING THE PETITIONER WAS DENIED THE RIGHT TO CROSS EXAMINE AND CONFRONT HIS ACCUSER LEAVING THE FINAL COURT TO BASE THEIR DECISION ON HEARSAY EVIDENCE.

(4). THE PETITIONER WAS DENIED THE PROCEDURAL DUE PROCESS UNDER THE 14th AMENDMENT WHEN HE HAD COMMITTED NO NEW OFFENSE ("BOARDS REASONS FOR REVOCATION")

(PAGE 2)

STATEMENT OF THE CASE

ON MARCH 5th 2003. JAMES BODY WAS ARRESTED BY MOBILE COUNTY SHERIFFS NARCOTICS, AND VICE OFFICERS. HE WAS CHARGED WITH POSSESSION OF OF A CONTROLLED SUBSTANCE, TRAFFICKING MARIJUANA, POSSESSION OF MARIJUANA, AND CERTAIN PERSONS FORBIDDEN TO POSSES A FIREARM. THEREAFTER A PAROLE OFFICERS AUTHORIZATION OF ARREST WAS ISSUED ON MARCH 6, 2003. THEREAFTER JAMES EDWARD BODY WAS HELD IN THE METRO JAIL. THE BOARD HAS FAILED TO PROVIDE THE PETITIONER A COPY OF THE HEARING NOR THE RESULTS, SO HE DOES NOT HAVE THE DATES. ON THE REPORT OF PAROLE VIOLATION (P.B. FORM 109-(Rev.592)) CHARGES AGAINST THE PETITIONER INSTITUTING REVOCATION ARE AS LISTED CHARGE #1 VIOLATION OF CONDITION # 7 NEW OFFENSE (POSSESSION OF A CONTROLLED SUBSTANCE, CHARGE # 2 VIOLATION OF CONDITION # 7 NEW OFFENSE TRAFFICKING MARIJUANA. CHARGE # 3 VIOLATION OF CONDITION # 7 NEW OFFENSE POSSESSION OF MARIJUANA 1st DEGREE. CHARGE # 4 VIOLATION OF CONDITION # 10 NEW OFFENSE CERTAIN PERSONS FORBIDDEN TO POSSES A FIREARM.

I RECOMMEND THAT A PAROLE REVOCATION HEARING BE HELD ON JAMES BODY, AND HIS PAROLE BE REVOKED. MARCH 12th 2003. SIGNED LARRY WHITE ALABAMA PROBATION AND PAROLE OFFICER.

ON MAY 14th 2003 THE BOARD REVOKED MR. BODY'S PAROLE, THE REVOCATION WAS OCCATIONED BY HIS ARREST.

ON NOVEMBER 18th 2004 THE MATTER WAS SET BEFORE THE HONORABLE JUDGE LOCKETT CIRCUIT COURT JUDGE MOBILE COUNTY ALABAMA. MATTERS PENDING BEFORE THE COURT ARISING OUT OF HIS ARREST.

AT THAT TIME THE STATE WAS UNABLE TO GO FOWARD WITH ITS PROSECUTION, AND ADVISED THE COURT. THE MOTION TO DISMISS MADE BY THE PETITIONER THROUGH COUNSEL WAS GRANTED, AND THE PENDING CHARGES AGAINST MR. BODY WERE DISMISSED.

ARGUMENT

MORRISSEY V. BREWER 408 U.S. 471, 33 L Ed 2d 484, 92 S.Ct. 2593
MORRISSEY WAS CONVICTED IN 1962 PRUSUANT TO HIS GUILTY PLEA, AND WAS SENTENCED TO NOT MORE THAN 7 yr. CONFINEMENT. HE WAS PAROLED FROM IOWA STATE PENITENTIARY IN JUNE 1968, 7 MONTHS LATER AT THE DIRECTION OF HIS PAROLE OFFICER'S WRITTEN REPORT THE IOWA BOARD OF PAROLE REVOKED MORRISSEY'S PAROLE, AND HE WAS RETURNED TO THE PENITENTIARY.

THE PAROLE OFFICER'S REPORT ON WHICH THE BOARD ACTED SHOWS THAT MORRISSEY'S PAROLE WAS REVOKED ON THE BASIS OF INFORMATION THAT HE HAD VIOLATED THE CONDITIONS OF PAROLE BY BUYING A CAR UNDER AN ASSUMED NAME, AND OPPORATING IT WITHOUT PERMISSION, GIVING FALSE STATEMENT TO POLICE CONCERNING HIS ADDRESS, AND INSURANCE CO., AFTER A MINOR ACCIDENT, OBTAINING CREDIT UNDER AN ASSUMED NAME, AND FAILING TO REPORT HIS PLACE OF RESIDENCE TO HIS PAROLE OFFICER

FURTHER THE REPORT ASSERT THAT MORRISSEY ADMITTED BUYING THE CAR, AND OBTAINING CREDIT UNDER AN ASSUMED NAME, AND ALSO ADMITTED BEING INVOLVED IN THE ACCIDENT.

THE UNITED STATES SUPREME COURT SAID IN MORRISSEY. "OUR TASK IS LIMITED TO DECIDING THE MINIMUM REQUIREMENTS OF DUE PROCESS"; THEY INCLUDE (A) WRITTEN NOTICE OF THE CLAIMED VIOLATIONS OF PAROLE; (b) DISCLOSURE TO THE PAROLEE OF THE EVIDENCE AGAINST HIM; (c) OPPORTUNITY TO BE HEARD IN PERSON, AND PRESENT AND TO PRESENT WITNESSES, AND DOCUMENTED EVIDENCE; (d) THE RIGHT TO CONFRONT AND CROSS-EXAMIN ADVERSE WITNESS, UNLESS HEARING OFFICER SPECIFICALLY FINDS GOOD CAUSE FOR NOT ALLOWING CONFRONTATION; (e) A NETURAL, AND DETACHED "HEARING BODY SUCH AS A TRADITIONAL PAROLE BOARD MEMBER OF WHICH NEED NOT BE JUDICIAL OFFICER, OR LAWYER AND (f) A WRITTEN STATEMENT BY THE FACTFINDER AS TO THE EVIDENCE RELIED ON AND REASONS FOR REVOKING PAROLE; (404 U.S. 489):

THE PETITIONER ARGUES THAT IT IS CLEARLY ESTABLISHED LAW THAT A PAROLEE HAS A CONSTITUTIONAL RIGHT TO PROCEDURAL DUE PROCESS (MORRISSEY V. BREWER 408 U.S. 471, 1972) (MONROE V. THIGPIN 932 F.2d (11th Cir. 1991)).

THE PETITIONER ARGUES THAT THE PAROLE OFFICER'S REPORT WAS THE ONLY EVIDENCE INTRODUCED AGAINST THE PETITIONER. THE USE OF SUCH HEARSAY EVIDENCE DENIED THE PETITIONER THE RIGHT CROSS-EXAMIN AND CONFRONT HIS ACCUSER, ON WHICH THE PAROLE BOARD BASED ITS DECISION TO REVOKE THE PETITIONER'S PAROLE.

THE PAROLE BOARD MEMBER WHO HAD NO FIRST HAND KNOWLEDGE OF THE MATERIALS CONTAINED IN THE REPORT AMOUNTED TO NOTHING MORE THAN AN EXERCISE IN FUTILITY, THUS THE PETITIONER WAS DENIED THE MINIMUM DUE PROCESS OF LAW. (EXPARTE BELCHER, 350 SO.2d 718).

THE PETITIONER FUTHER ARGUES THAT HE WAS DENIED PROCEDURAL DUE PROCESS UNDER THE 14th AMENDMENT WHEN HE WAS ARRESTED AND PLACED IN JAIL, AND SENT TO PRISON HAVING COMMITTED NO NEW OFFENSE, (MORRISSEY V. BREWER. AT THE STATE LEVEL THE CONSTRUCTION OF PAROLE STATUTES AND REGULATIONS IS FOR STATES ALONE, SAVE AS THEY IMPLICATE THE SUPREMACY CLAUSE CONTROLS.

THE PETITIONER ARGUES THAT EVEN THOUGH HE WAS ARRESTED AND PLACED IN JAIL FOR POSSESSION OF A CONTROLLED SUBSTANCE, TRAFFICKING IN MARIJUANA, POSSESSION OF MARIJUANA 1st DEGREE, AND CERTAIN PERSONS FORBIDDEN TO POSSESS A FIREARM.

THESE CASES WERE DISMISSED See; EXHIBIT ATTACHED: WITHOUT THESE CHARGES THE PETITIONER COULD STILL BE ON PAROLE. HE IS NOW IN EFFECT SERVING TIME FOR THE COMMISSION OF AN OFFENSE FOR WHICH HE COULD NOT BE TRIED AND CONVICTED. SEE; ARMSTRONG V. STATE 294, AL. 107.

WHILE HEARSAY EVIDENCE MAY BE ADMITTED IN A PAROLE AND PROBATION REVOCATION HEARING AT THE DISCRETION OF THE FACTFINDER, HEARSAY EVIDENCE MAY NOT BE THE SOLE BASIS FOR REVOKING PAROLE/PROBATION IN THIS STATE. EXPARTE BELCHER, 556 SO.2d 366 (AL. 1999); (MALLETT V. STATE 572 SO.2d 1316 (AL. Cr.App.1990) JOHNSON V. STATE 729 So. 2d 897 (AL.Cr.App. 1999).

THE PETITIONER ASSERT THAT MANY OF THE MANDATES SET OUT IN MORRISSEY CONCERNING DUE PROCESS WERE NOT MET. THE MOST IMPORTANT BY FAR IS THE FACT THAT HIS PAROLE WAS REVOKED FOR COMMITTING A NEW OFFENSE, WHEN IN FACT HE HAD COMMITTED NO NEW OFFENSE. ALL CHARGES WERE DROPPED. See; EXHIBIT ATTACHED:

DUE PROCESS MANDATES PLIMINARY AND FINAL REVOCATION HEARING IN THE CASES OF A PROBATIONER UNDER THE SAME CONDITIONS AS ARE SPECIFIED IN MORRISSEY V. BREWER 408 U.S. 471, 33 L Ed 2d 484, 92 S.Ct. 2593, IN THE CASE OF A PAROLEE.

IN GRACE V. STATE 727 SO. 2D 881, THE ALABAMA COURT OF CRIMINAL APPEALS HELD THAT GRACE CORRECTLY ASSERT THAT A DEFENDANT'S PROBATION CAN NOT BE REVOKED MERELY BECAUSE OF AN ARREST, OR MERELY BASED ON HEARSAY EVIDENCE. (HERNANDEZ V. STATE 673 SO.2d 475, 476 AL.Cr.App. 1995. WEAVER V. STATE 515 SO.2d 79, 81 AL.Cr.App. 1987.

IMPLICIT IN THE SYSTEMS CONCERN WITH PAROLE VIOLATIONS IS THE NOTION THAT THE PAROLEE IS ENTITLED TO RETAIN HIS LIBERTY AS LONG AS HE SUBSTANTIALLY ABIDES BY THE CONDITIONS OF HIS PAROLE. THE

THE FIRST STEP IN A REVOCATION DECISION THUS INVOLVES A WHOLLY RETROSPECTIVE FACTUAL QUESTION WHETHER THE PAROLEE HAS IN FACT ACTED IN VIOLATION OF HIS PAROLE. ONLY IF IT IS DETERMINED THAT THE PAROLEE DID VIOLATE THE CONDITIONS DOES THE SECOND QUESTION ARISE. (408 U.S. 493) MORRISSEY V. BREWER:

SOCIETY THUS HAS AN INTEREST IN NOT HAVING PAROLE REVOKED BECAUSE OF AN ERRONOUS INFORMATION OR BECAUSE OF AN ERRONOUS EVALUATION OF THE NEED TO REVOKE PAROLE. (MORRISSEY 408 U.S. 496 at 12).

CONCLUSION

THE PETITIONER WAS ARRESTED FOR POSSESSION OF A CONTROLLED SUBSTANCE, TRAFFICKING IN MARIJUANA, POSSESSION OF MARIJUANA 1st DEGREE, AND CERTAIN PERSONS FORBIDDEN TO POSSESS A FIREARM. ON NOVEMBER 18th 2004 THESE CHARGES WERE BROUGHT BEFORE THE HONORABLE JUDGE LOCKETT CIRCUIT COURT JUDGE MOBILE COUNTY ALABAMA. THE STATE WAS UNABLE TO GO FORWARD WITH ITS PROSECUTION, AND ADVISED THE COURT AS SUCH. THEREAFTER THE DEFENDANT'S MOTION TO DISMISS WAS GRANTED. THE PETITIONER Mr. BODY ASSERTED ALL ALONE THAT HE WAS INNOCENT OF ALL CHARGES. THE BOARD REVOKED THE PETITIONER'S PAROLE BASED ON ERRONOUS INFORMATION (A FALSE ARREST): THE PETITIONER WAS DENIED THE MINIMUM DUE PROCESS REQUIREMENTS SET OUT IN MORRISSEY V. BREWER 408 U.S. 471, 33 Ed 2d 484, 92 S.Ct. 2593.

THE RIGHT TO BE HEARD IN PERSON AND TO PRESENT WITNESSES. ONLY EVIDENCE PRESENTED TO THE BOARD WAS THE HEARING OFFICER'S REPORT (HEARSAY). THE RIGHT TO CONFRONT AND CROSS-EXAMINE ADVERSE WITNESS. THE PETITIONER NOR THE HEARING OFFICER WAS AT THE FINAL HEARING BEFORE THE BOARD. THIS WAS IN VIOLATION OF HIS 14th AMENDMENT RIGHT TO DUE PROCESS. MORRISSEY V. BREWER 408 U.S. 471) ARMSTRONG V. STATE 294, AL. 107, 312 SO. 2d 620 (1975).

PAROLE IS NOT THE ONLY ONE WHO HAS A STAKE IN HIS CONDITIONAL LIBERTY, SOCIETY HAS A STAKE IN WHAT EVER MAY BE THE CHANCE OF RESTORING HIM TO NORMAL AND USEFUL LIFE WITHIN THE LAW. SOCIETY THUS HAS AN INTEREST IN NOT HAVING PAROLE REVOKED BECAUSE OF ERRONOUS EVALUATION OF THE NEED TO REVOKE PAROLE GIVEN THE BREACH OF PAROLE CONDITIONS .(MORRISSEY V. BREWER 408 U.S. 471):

RELIEF SOUGHT

THE PETITIONER PRAYS THAT THIS HONORABLE COURT GRANT THE WRIT OF CERTIORARI AND ORDER THE BOARD REINSTATE HIS PAROLE AND HE BE ALLOWED TO CONTINUE AS HE HAD BEFORE THE CHARGES THAT WERE DISMISSED WERE BROUGHT AGAINST HIM. THE PETITIONER WAS A PRODUCTIVE CITIZEN PROVIDING MEANINGFUL CONTRIBUTIONS TO THE COMMUNITY. Mr. BODY HAS HIS OWN CONSTRUCTION COMPANY WHICH EMPLOYES EIGHT TO TEN OTHER CITIZENS.

THE PETITIONER Mr. BODY PRAYS THAT THIS COURT PROCEED UNDER THE GUIDELINES AND LAWS SET FORTH AND GRANT HIM THE RELIEF HE SO SEEKS. TO EITHER BE PLACED BACK ON PAROLE OR BE GIVEN ANOTHER CHANCE AT FREEDOM.

RESPECTFULLY SUBMITTED THE 14 DAY OF February 2005.

James B. Body

BRISKMAN & BINION, P.C.

LAWYERS

205 CHURCH STREET

MOBILE, ALABAMA

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MACK B. BINION
CHRIST N. COUMANIS
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TELEPHONE
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FAX
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November 30, 2004

Board of Pardons and Parole
301 South Ripley St.
P. O. Box 302405
Montgomery, AL 36130-2405
Attention: Field Service

RE: James Edward Body
AIS #144883

Gentlemen:

I represent James Edward Body. His parole was revoked on May 14, 2003. The revocation was occasioned by his arrest. At the time of his arrest, it is my information that there were no drugs found on Mr. Body's person, in his vehicle or, circumstances that would support him otherwise having possession of drugs.

On November 18, the matter was set for the hearing before Judge Lockett, Circuit Court Judge of Mobile County on matters pending before the court arising out of this arrest.

At that time, the State was unable to go forward with its prosecution and advised the Court. The Motion to Dismiss made by the undersigned was granted and the pending charges against Mr. Body were dismissed. I am enclosing copy of the Case Action Summary reflecting the dismissal.

Accordingly, given the absence of a conviction and an arrest for charges which were not factually supportable, I respectfully move and request that the Board readmit Mr. Body to parole.

Respectfully submitted,

BRISKMAN & BINION, P.C.

DONALD M. BRISKMAN
DMB/aks

c: James Body

http://gateway.alacourt.com/CaseDetailCC.asp?o3A6sCJ=00BLXLXLBVUL&6OB=LL... 11/29/2004

Case		02 MOBILE		Case Number		CC 2004 002330 00		JID		JRL		DEF		ST PRISON ESTS: N	
Name		BODY JAMES EDWARD		Alias		Alias		Alias		Alias		YDate		PR	
Address 1		2053 STEINER STREET		Address 2		(AIS #144883)		SID		AS		AL		0000000000	
Zip		3605 0000 MOBILE AL US		DOB		03021954		SSN		419766120		Race/Sex		B/M	
Height		5 08		Weight		225		Eyes		BRO		Hair		BLK	
Filed		06262004		AAGCY		C		Mun#		00		City			
Arrest		03052003		OFFD		Grand Jury		Atty 1		BRI014 R		TK#		S03030302	
Indict		06252004		Type		Bond Co		JMD				APPL		00000000	
Sure				CWIT											
Tracking		DC 2003 002097 00 / 0000 000000 00 / 0000 000000 00		No's											
Date		1 08102004		Que		001		Time		0830 A		Desc		ARRG	
Charge 1		VAPF		POSS MARIJUANA 1ST		13A-012-213 F DR		Counts		001					
Charge 2								Counts							
Charge 3								Counts							
More		N		Dom Viol				Case Type		F		Case Cat		DR	
Comment		HS 2004-2331 CMP 2004-2328 & 2329													
Settings															
Date 1		08102004		Que		001		Time		0830 A		Desc		ARRG ARRANGMENT	
Date 2		08102004		Que		010		Time		0830 A		Desc		JTRL JURY TRIAL	
Date 3		11182004		Que		000		Time		0830 A		Desc		MOTD MOTION	
Date 4				Que		000		Time		0000		Desc		DOCKET/HEAR	
Prosecutor		TYSON JOHN M		Atty 1		BRISKMAN DONALD		Atty 2							
Flag		N		Flag		Y		Flag		Y					
WARISS				WARACT				BP RTN							
BP ISS															
Disposition		D DISMISSED		CADATE		11182004		Jury		Y		More		N	
CRT ACT															
Charge 1		VAPF POSS MARIJUANA 1ST 13A-012-213 F D		Counts		001		CA		D 11182004					
Charge 2				Counts				CA							
Charge 3				Counts				CA							
Admin				Why				TBNV1							
Appeal				CAPP		T		Type		GJCA		GJCA			
Cont Dt				Why				Con#		00		DOM VIOL			
Comment															
CMP:N		SPRO:N		Due		0000000000		Warr:000		SUBP:012		Updated		11232004	
Sentence															
Sent		Begin		End				PRB BEG							
IMP CONF		00 00 000		SUSP CONF		00 00 000		CONF		00 00 000		JAIL		00 00 000	
LCN SUSP		00 00 000		PROBATION		00 00 000		PRB REV		000000000					
Monetary:		COST		FINE IMP		00000000		SUSP		00000000		CVCC		HIS	
		WCOS		MCOS		00000000		JFEE		00000000		DRGP		0 ASU	
		WCPA		REMB		00000000		3CVC		00000000		WARR		000 USF	
		PRXL		DRUG		00000000		RCVP		00000000		SUBP		012	
		RES1		00000000		RES2		00000000		RES3		00000000		RES4	
		RES5		00000000		RES6		00000000		RES7		00000000		RES8	

B

Settings Disposition Sentence Case Action Summary Witness List Financial Evidence

Alabama STS CC/DC Case Detail

alacourt.com's



Confine:	PENT	LIFE	LWOP	DEATH	SPLIT	BOOT 000	EMON 00
	JAIL	CCUR	CSEC	CTERM	RVSP	GANG 000	
Programs:	JDVR	IPROB	AASCH	DUI	DDC	CSV 0000	SAPP
	PTPL	BCSCH	MNTL	CRO	ASCH	ANGER	DRUGCT
Enhanced:	PROJ	CNOT	SCH	VDOB	00000000	HOOF 000	
	DRUG CODE:		MEAS:	VOL:	00000000		
SEC/CUR:	00	00000000000000	00	00	00000000000000	00	00000000000000
Comment:							
BAL DUE	DUE		CRO		Updated		11232004
Case Action Summary							

Date	Time	Code	Comments	Operator
07202004	1118	JUDG	ASSIGNED TO: (JCW) JAMES C WOOD (AR01)	MAH
07202004	1118	FILE	FILED ON: 06/25/2004 (AR01)	MAH
07202004	1118	STAT	INITIAL STATUS SET TO: "J" - JAIL (AR01)	MAH
07202004	1118	ARRS	DEFENDANT ARRESTED ON: 03/05/2003 (AR01)	MAH
07202004	1118	INDT	DEFENDANT INDICTED ON: 06/25/2004 (AR01)	MAH
07202004	1118	FILE	CHARGE 01: POSS MARIJUANA 1ST#CNTS: 001 (AR01)	MAH
07202004	1118	COMM	HS 2004-2331 CMP 2004-2328 & 2329 (AR01)	MAH
07202004	1118	JUDG	JUDGE ID CHANGED FROM: JCW TO: JRL (AR10)	MAH
07202004	1118	CASP	CASE ACTION SUMMARY PRINTED (AR01)	MAH
07232004	0254	DOCK	NOTICE SENT: 07/23/2004 BODY JAMES EDWARD	EVY
07232004	1120	DAT1	SET FOR: ARRAIGNMENT ON 08/10/2004 AT 0830A(AR10)	MAH
07262004	1051	STAT	STATUS CHANGED TO: "P" - PRISON (AR01)	MAH
08022004	1523	DAT2	SET FOR: JURY TRIAL ON 10/13/2004 AT 0830A (AR10)	PAR
08132004	0901	DAT3	SET FOR: ARRAIGNMENT ON 09/16/2004 AT 0830A(AR10)	ROH
09212004	1630	DAT3	SET FOR: ARRAIGNMENT ON 10/12/2004 AT 0830A(AR10)	ROH
09222004	0206	DOCK	NOTICE SENT: 09/22/2004 BODY JAMES EDWARD	ROH
09272004	0247	DOCK	NOTICE SENT: 09/27/2004 BODY JAMES EDWARD	MAH
09282004	0652	SUBP	WITNESS SUBPOENAS ISSUED	MAH
09282004	0653	SUBP	WITNESS SUBPOENAS ISSUED	MAH
10252004	1106	DAT3	SET FOR: OARRAIGNMENT ON 10/29/2004 AT 0830A(AR10)	TEG
11032004	1619	DAT2	SET FOR: JURY TRIAL ON 12/13/2004 AT 0830A (AR10)	ROH
11032004	1619	DAT3	SET FOR: MOTION DOCKET/HEAR ON 11/18/2004 AT 0830A	ROH
11032004	1620	ATY1	ATTORNEY FOR DEFENDANT: BRISKMAN DONALD M (AR10)	ROH
11052004	1515	PRTY	PARTY ADDED W001 CPL. ROY CUTHKELVIN (AW21)	DAB
11052004	1515	PRTY	PARTY ADDED W002 SGT. MIKE REYNOLDS (AW21)	DAB
11052004	1515	PRTY	PARTY ADDED W003 CPL. EDDIE BLACKWELL (AW21)	DAB
11052004	1516	PRTY	PARTY ADDED W004 DEP. MARVIN WALKER (AW21)	DAB
11052004	1516	PRTY	PARTY ADDED W005 DEP. WAYNE GOOLSBY (AW21)	DAB
11052004	1516	PRTY	PARTY ADDED W006 SGT. GERALD LAMEY (AW21)	DAB
11052004	1517	PRTY	PARTY ADDED W007 DEP. JOHNNY THORNTON (AW21)	DAB
11052004	1517	PRTY	PARTY ADDED W008 DEP. DAVID SIMESON (AW21)	DAB
11052004	1517	PRTY	PARTY ADDED W009 DEP. HOUSEKNECHT (AW21)	DAB
11052004	1518	PRTY	PARTY ADDED W010 DEP. A. L. NEIDHARDT (AW21)	DAB
11052004	1519	PRTY	PARTY ADDED W011 J. G. WALLACE (AW21)	DAB
11052004	1520	PRTY	PARTY ADDED W012 KATRINA WARREN (AW21)	DAB
11222004	0218	DOCK	NOTICE SENT: 11/22/2004 BODY JAMES EDWARD	MAH
11222004	0218	DOCK	NOTICE SENT: 11/22/2004 BRISKMAN DONALD M	MAH
11232004	0645	SUBP	WITNESS SUBPOENAS ISSUED	MAH
11232004	1534	JFEL	JUROR FELONY FLAG SET ON FOR INDIVIDUAL (AR10)	ROH
11232004	1534	DISP	CHARGE 01 DISPOSED BY: DISMISSED ON: 11/18/2004	ROH
11232004	1534	DJID	DISPOSITION JUDGE ID CHANGED FROM: TO: JRL	ROH
11232004	1534	DISP	CHARGE 01: POSS MARIJUANA 1ST #CNTS: 001 (AR10)	ROH
11232004	1534	D001	ENFORCEMENT STATUS SET TO: "N" (AR10)	ROH

	RES4 00000000	RES5 00000000	RES6 00000000
Confine:	PENT	LIFE	LNOP
	DEATH	SPLIT	BOOT 000
	EMON 00	JAIL	CCUR
	CSEC	CTERM	RVSP
Programs:	JDVR	IPROB	AASCH
	DUI	DDC	CSV 0000
	SAPP	PTRL	BCSCH
	MNTL	CRO	ASCH
	ANGER	DRUGCT	
Enhanced:	PROJ	CNOT	SCH
	VDOB 00000000	HOOF 000	
	DRUG CODE:	MEAS:	VOL: 00000000
SEC/CUR:	00	00000000000000 00	00 00000000000000 00 00 00000000000000
Comment:			
BAL DUE	DUE	CRO	Updated 11232004
Case Action Summary			

Date	Time	Code	Comments	Operator
07202004	1121	JUDG	ASSIGNED TO: (JRL) JOHN R LOCKETT (AR01)	MAH
07202004	1121	STAT	INITIAL STATUS SET TO: "J" - JAIL (AR01)	MAH
07202004	1121	FILE	FILED ON: 06/25/2004 (AR01)	MAH
07202004	1121	ARRS	DEFENDANT ARRESTED ON: 03/05/2003 (AR01)	MAH
07202004	1121	INDT	DEFENDANT INDICTED ON: 06/25/2004 (AR01)	MAH
07202004	1121	FILE	CHARGE 01: TRAFFICKING-MARIJUAN/#CNTS: 001 (AR01)	MAH
07202004	1121	COMM	HS 2004-2330 CMP 2004-2328 & 2329 (AR01)	MAH
07202004	1122	ADD1	ADDR1 CHANGED FROM: 928 NELLIE STREETET (AR01)	MAH
07202004	1122	CASP	CASE ACTION SUMMARY PRINTED (AR01)	MAH
07232004	0254	DOCK	NOTICE SENT: 07/23/2004 BODY JAMES EDWARD	EVY
07232004	1121	DAT1	SET FOR: ARRAIGNMENT ON 08/10/2004 AT 0830A(AR10)	MAH
07262004	1051	STAT	STATUS CHANGED TO: "P" - PRISON (AR01)	MAH
08022004	1524	DAT2	SET FOR: JURY TRIAL ON 10/13/2004 AT 0830A (AR10)	PAR
08132004	0901	DAT3	SET FOR: ARRAIGNMENT ON 09/16/2004 AT 0830A(AR10)	ROH
09212004	1630	DAT3	SET FOR: ARRAIGNMENT ON 10/12/2004 AT 0830A(AR10)	ROH
09222004	0206	DOCK	NOTICE SENT: 09/22/2004 BODY JAMES EDWARD	ROH
09272004	0247	DOCK	NOTICE SENT: 09/27/2004 BODY JAMES EDWARD	MAH
09282004	0652	SUBP	WITNESS SUBPOENAS ISSUED	MAH
09282004	0653	SUBP	WITNESS SUBPOENAS ISSUED	MAH
10252004	1106	DAT3	SET FOR: SET FOR DISPOSITIO ON 10/29/2004 AT 0830A	TEG
11032004	1620	ATY1	ATTORNEY FOR DEFENDANT: BRISKMAN DONALD M (AR10)	ROH
11032004	1620	DAT3	SET FOR: MOTION DOCKET/HEAR ON 11/18/2004 AT 0830A	ROH
11032004	1620	DAT2	SET FOR: JURY TRIAL ON 12/13/2004 AT 0830A (AR10)	ROH
11222004	0218	DOCK	NOTICE SENT: 11/22/2004 BODY JAMES EDWARD	MAH
11222004	0218	DOCK	NOTICE SENT: 11/22/2004 BRISKMAN DONALD M	MAH
11232004	0645	SUBP	WITNESS SUBPOENAS ISSUED	MAH
11232004	1534	DJID	DISPOSITION JUDGE ID CHANGED FROM: TO: JRL	ROH
11232004	1534	DISP	CHARGE 01: TRAFFICKING-MARIJUA/#CNTS: 001 (AR10)	ROH
11232004	1534	DISP	CHARGE 01 DISPOSED BY: DISMISSED ON: 11/18/2004	ROH
11232004	1534	D001	ENFORCEMENT STATUS SET TO: "N" (AR10)	ROH

State of Alabama Unified Judicial System Form ARAP-26 (front) 8/91	COURT OF CRIMINAL APPEALS DOCKETING STATEMENT	Criminal Appeal Number
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A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF MONTGOMERY COUNTY
JAMES EDWARD BODY Appellant

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF

Case Number	Date of Complaint or Indictment	Date of Judgment/Sentence/Order <u>5-14-2003</u>
Number of Days of Trial/Hearing Days	Date of Notice of Appeal Oral:	Written:
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Indigent Status Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. REPRESENTATION:

Is Attorney Appointed or Retained? ☐ Appointed ☐ Retained. If no attorney, will appellant represent self? ☒ Yes ☐ No

Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary)		Telephone Number	
Address	City	State	Zip Code

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant	Case Number
<u>N/A</u>	
Codefendant	Case Number
Codefendant	Case Number

D. TYPE OF APPEAL: Please check the applicable block.

- 1 ☐ State Conviction 4 ☐ Pretrial Order 7 ☐ Juvenile Transfer Order 10 ☒ Other (Specify) PAROLE REVOCATION
 2 ☐ Post-Conviction Remedy 5 ☐ Contempt Adjudication 8 ☐ Juvenile Delinquency
 3 ☒ Probation Revocation 6 ☐ Municipal Conviction 9 ☐ Habeas Corpus Petition

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- 1 ☐ Capital Offense - § _____ 6 ☐ Trafficking in Drugs - § _____ 11 ☐ Fraudulent Practices - § _____
 2 ☐ Homicide - § _____ 7 ☐ Theft - § _____ 12 ☐ Offense Against Family - § _____
 3 ☐ Assault - § _____ 8 ☐ Damage or Intrusion to Property - § _____ 13 ☐ Traffic - DUI - § _____
 4 ☐ Kidnapping/Unlawful Imprisonment - § _____ 9 ☐ Escape - § _____ 14 ☐ Traffic - Other - § _____
 5 ☐ Drug Possession - § _____ 10 ☐ Weapons/Firearms - § _____ 15 ☐ Miscellaneous (Specify): _____ § _____

F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

G. TRANSCRIPT:

1. Will the record on appeal have a reporter's transcript? ☐ Yes ☐ No
 2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. _____ (Date)
 3. If the answer to question "1" is "No":
 (a) Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☐ No
 (b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

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Form ARAP- 26 (back) 8/91

COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

4. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)).

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

ON MAY 14th 2003 THE ALABAMA BOARD OF PARDONS AND PAROLE REVOKED JAMES BODY'S PAROLE CITING VIOLATIONS (NEW OFFENSE) POSSESSION OF CONTROLLED SUBSTANCE, TRAFFICKING IN MARIJUANA, POSSESSION OF MARIJUANA FIRST DEGREE AND CERTAIN PERSON FORBIDDEN TO POSSESS A FIREARM. ON NOVEMBER 18th 2004 THESE CASES CAME BEFORE THE HONORABLE CIRCUIT JUDGE LOCKETT CIRCUIT COURT JUDGE MOBILE COUNTY ALABAMA. AT THAT TIME THE STATE WAS UNABLE TO GO FORWARD WITH PROSECUTION AND ADVISED THE COURT OF SUCH. THE COURT MOVED ON THE DEFENDANT'S MOTION TO DISMISS AND GRANTED THE MOTION DISMISSING ALL CHARGES AGAINST MR. BODY. BOARD'S REASONS FOR REVOKING HIS PAROLE.

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

THE PETITIONER'S DUE-PROCESS AND EQUAL PROTECTION RIGHTS HAVE BEEN VIOLATED AS HE WAS NOT AFFORDED THE RIGHT TO CONFRONT HIS ACCUSES. HIS PAROLE WAS REVOKED ON HEARSAY EVIDENCE AND THE REASONS RELIED ON FOR REVOCATION NO LONGER EXIST.

K. SIGNATURE:

James B. Body

SP/PS
3/14/05
X-

Date

Signature of Attorney/ Party Filing this Form

State of Alabama
Unified Judicial System**AFFIDAVIT of SUBSTANTIAL
HARDSHIP and ORDER**

Case Number

Form C-10 (front) Rev. 8/92

CV 05-652

IN THE Circuit COURT OF MONTGOMERY COUNTY
☐ STATE OF ALABAMA ☐ MUNICIPALITY OF JAMES EDWARD BOY #144883
 v. ALABAMA BOARD OF PAROONS AND PAROLES, Defendant
 TYPE OF PROCEEDING: Writ of Certiorari CHARGE: Parole Violation

- ☒ CIVIL CASE-I, because of substantial hardship, am unable to pay the docket fee and service fees in this case. I request that payment of these fees be waived initially and taxed as costs at the conclusion of the case.
- ☐ CIVIL CASE (such as paternity, support, termination of parental rights, dependency) - I request an attorney be appointed for me.
- ☐ CRIMINAL CASE--I am financially unable to hire an attorney and request that the Court appoint one for me.
- ☐ DELINQUENCY/NEED OF SUPERVISION - I am financially unable to hire an attorney and request that the Court appoint one for my child.

AFFIDAVIT

INCOME/EMPLOYMENT

- A. Do you have a job or work for yourself? ☐ Yes ☒ No
 Employer's name and address _____
 How much money do you take home each week? + \$ N/A
- B. If unemployed, give month and year of last employment and amount earned per month \$ N/A
- C. Does your husband or wife have a job? ☐ Yes ☒ No
 Employer's name and address _____
 How much money does he/she take home each week? + \$ N/A
- D. Do you receive money or benefits from any other source? ☐ Yes ☒ No
 (Example: retirement pay, social security, workmen's compensation, unemployment compensation, food stamps, rent payments, interest, dividends, etc.)
 How much do you receive each month? + \$ N/A

ASSETS

- A. Do you have any money in any bank, savings and loan, credit union, or any other place, including cash on hand? ☐ Yes ☒ No
 Where? _____ How much? + \$ N/A
- B. Do you own anything else of value? (Land, house, boat, television, stereo, jewelry, car, truck, van, stocks, bonds, etc.) ☐ Yes ☒ No
 What? _____
 Total Value + \$ N/A

DEPENDENTS

- A. Are you: ☐ Single ☐ Married ☐ Widowed ☒ Divorced ☐ Separated?
- B. Do you have any dependents? ☐ Yes ☒ No
 Who and what relationship? _____

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 IN THE COURT OF
 MONTGOMERY COUNTY

AFFIDAVIT of SUBSTANTIAL HARDSHIP and ORDER

What does it cost you to live each month?

- \$ N/AD
E
B
T
S

Creditor	Total Debt	Monthly Payment
Loans	\$	\$
Charge Accounts		
House or rent payments		
Alimony		
Support <u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Car payment		
Groceries		
Utilities		

In support of this request, I have answered the above questions relating to my ability to pay. I swear that these answers are true and reflect my present financial status. I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

I further understand and acknowledge that if the Court appoints an attorney to represent me, the Court may require me to pay the fees and expenses of my court-appointed counsel and costs of court.

Sworn to and subscribed before me this

8 day of March 198005

Judge/Notary

MY COMMISSION EXPIRES DEC. 13, 2005

Affiant Signature

Home Address 200 WALLACE DR. CLIO MI 48017Social Security Number 419-76-6120Date of Birth 3-2-54

ORDER

IT IS ORDERED THAT THE FOREGOING REQUEST BE:

☒ GRANTED☐ DENIED

IT IS THEREFORE, ORDERED AND ADJUDGED BY THE COURT THAT (Check one or more of the following boxes, as appropriate):

- ☐ Attorney at Law, be and is hereby appointed as counsel to represent, assist and defend in this case(s).
- ☒ the prepayment of the docket fee be waived.
- ☐ the Court reserves the right and may order reimbursement of attorney's fees, expenses approved by the Court and paid to the appointed counsel, and costs of Court.

DONE this

18

day of

March

, 19

08

Judge

2005 APR -1 PM 4:48
CLERK OF
COURT OF
COMMON
COUNT

19

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
EASTERLING CORR FACILITY

AIS #: 144883

NAME: BODY, JAMES EDWARD

AS OF: 03/07/2005

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
MAR	24	\$0.00	\$0.00
APR	30	\$70.54	\$202.11
MAY	31	\$97.55	\$200.00
JUN	30	\$82.94	\$255.00
JUL	31	\$83.32	\$25.00
AUG	31	\$1.88	\$0.00
SEP	30	\$27.77	\$126.51
OCT	31	\$2.86	\$0.00
NOV	30	\$1.99	\$0.00
DEC	31	\$1.99	\$0.00
JAN	31	\$60.45	\$250.55
FEB	28	\$79.04	\$180.00
MAR	7	\$71.96	\$0.00

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

JAMES EDWARD BODY,
AIS # 144883
Petitioner,

Vs.

CASE NO. CV 05-652

STATE OF ALABAMA BOARD
OF PARDONS & PAROLES

Respondent.

ANSWER AND MOTION TO DISMISS

COME NOW the State of Alabama and its Board of Pardons and Paroles, by counsel, in response to Petitioner's claims and moves the Court to dismiss this action. The Board of Pardons and Paroles (hereinafter, the Board) submits the following in support thereof:

RESPONDENT'S UNDERSTANDING OF THE PETITION

Petitioner filed a Petition for Writ of Certiorari challenging the revocation of his parole dated 5-14-03. Petitioner claims he has been denied due process, in

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
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that, he was not afforded a copy of the hearing officer's report or the Board's Action sheet, was not allowed to properly rebut or cross-examine witnesses against him, and that it is improper to revoke parole as a result of criminal charges that are subsequently dismissed. He further claims he was improperly revoked due to new criminal offenses that were subsequently dismissed.

Petitioner seeks a court order directing the Board to reinstate him to parole.

JURISDICTIONAL ISSUES AND SCOPE OF REVIEW

The proper avenue to challenge the Board's actions in parole revocation matters is by petition for writ of certiorari with the Circuit Court of Montgomery County. In *Sanders v City of Dothan*, 642 So.2d 437 (Ala. 1994) the Alabama Supreme Court stated that the scope of the trial court's review is restricted to the record made before the commissioners. The court went on to state that the standard of review for certiorari limits the scope of review to questions of law and does not extend to review of the weight and preponderance of the

evidence. If there is any legal evidence to support the decision of the lower tribunal, such is conclusive on the reviewing court. In the case at bar, the Court's review is limited to the record of the parole court proceedings. That record is included as exhibits to this answer.

FACTS

Petitioner was paroled on 4-3-2000. A report of parole violation was prepared on 3-12-2003 by Parole Officer Larry White (Exhibit A).¹ The Board declared Petitioner delinquent on 4-29-2003 (Exhibit B). Petitioner was given "Notice of Parole Court Hearing" on 3-17-2003 (Exhibit C). Parole Court was conducted on 4-8-2003 by hearing officer Louie Grimes, who advised Petitioner of his rights and prepared a report of the hearing (Exhibit D). This report reflects that a police officer from Mobile County Sheriff's Office, who had personal knowledge of the events alleged in the Report of Parole Violation, testified as to those events. The

¹ Petitioner was arrested by Mobile County Sheriff's Office on 3-5-2003 for possession of controlled substance, trafficking in marijuana, possession of marijuana, and certain persons forbidden to possess a firearm.

Board voted to revoke Petitioner's parole on 5-14-2003
(Exhibit E).

EXHIBITS

Exhibit A	Report of Parole Violation, 3-12-2003
Exhibit B	Declaration of Delinquency, 4-29-2003
Exhibit C	Notice of Parole Court dated 3-17-2003
Exhibit D	Hearing Officer's Report, dated 4-8-2003
Exhibit E	Board Action, dated 5-14-2003

RESPONDENT'S ARGUMENTS

The Board denies Petitioner's allegations and submits the following in response thereto.

An Alabama inmate does not enjoy a liberty interest or due process protection in being paroled, *Ex Parte Alabama Board of Pardons and Paroles, In Re: Richard E. Henley*, 2002 WL 31528433 (Ala.Crim.App.) However, once released on parole a liberty interest attaches and the parolee's freedom may only be taken away after affording the parolee due process, *Morrissey v. Brewer*, 408 U.S. 471, (1972); *Horace Johnson v. State*, 1997 WL 545576 (Ala.Crim.App.). In *Morrissey, supra*, the United States Supreme Court set out the minimum requirements that must be met in a parole revocation to sustain a challenge that ones due process

rights have been violated.² The Respondents submit that the Morrissey standard was met in this case.

The Petitioner was given a copy of the Report of Parole Violation and Notice of the Parole Court Hearing.

Parole Court was conducted by an impartial hearing officer. The hearing officer's report reflects that Petitioner was advised of his rights. The Board's hearing officers have statutory authority to conduct such hearings and to determine the parolee's innocence or guilt of parole violations, *Alabama Code 15-22-32*.

Petitioner was afforded the opportunity to present evidence and witness and to cross-examine witnesses testifying against him. Petitioner was represented by an attorney, who advised Petitioner not to make any statement.

The hearing officer prepared a report, concluding the Respondent violated conditions of parole. The hearing officer's report states the evidence received, the evidence relied on and a recommendation. That

² In Morrissey the Court set the following requirements: (1) notice of charges, (2) disclosure of evidence against parolee, (3) opportunity to be personally heard and to present evidence, (4) right to confront and cross examine witnesses against parolee, (5) impartial hearing officer, (6) written statement by the fact finder of the evidence relied on and the reasons for the revocation.

evidence was the testimony of the Mobile County Sheriff's Officer, who was present during a search of Respondent's home where drugs and a gun were found. Both are parole violations. The Petitioner was on the distribution list for this report, indicating he was afforded a copy of the report.

The Board, relying on the fact finder's conclusions, revoked Petitioner's parole. The Board's "Action Of The Board Subsequent to Parole Court" sheet indicates distribution was made to the Petitioner/Parolee.

Respondents submit the *Morrissey* standard was met in revoking Petitioner's parole. Petitioner's claim that he was denied due process is frivolous.

Ala. Code 15-22-32 vested authority with the Board's hearing officers to determine the guilt or innocence at parole court hearings. Parole Court is not a part of the criminal process, but is an administrative hearing. The burden of proof is a "reasonably satisfied" standard. Petitioner's due process rights were satisfied when the Board provided him with notice, charges, evidence, impartial hearing

officer, opportunity to cross-exam witnesses, a statement of the findings, evidence relied on and the reasons parole was revoked.

Petitioner's belief that parole can not be revoked as a result of new criminal offenses that have been dismissed is a misunderstanding of the law. Parole may be revoked due to conduct that violates conditions of a parolee's release. If a parolee is convicted of a new criminal offense then a certified copy of the conviction may be offered as conclusive proof of parole violation. When convicted in a court of proper jurisdiction a parolee has been afforded due process (*Morrissey, supra*). However, nothing prevents the Board from using bad or illegal conduct to revoke parole, even though the parolee is never charged, never prosecuted, the case is dismissed, or he is subsequently acquitted. *Johnson v. State*, 240 Ga. 526, (Ga. Jan. 1978), cert. denied, 439 U.S. 881 (1978). The burden of proof at parole court, an administrative hearing, is "reasonable suspicion" not "beyond a reasonable doubt" like in a criminal prosecution.

In the case at bar a Mobile County Sheriff's Officer testified to personal knowledge of a search and presents of drugs and a gun that led to Petitioners arrest and subsequent revocation from parole. This evidence is legally sufficient to sustain a finding of "reasonable suspicion" that parole conditions were violated. This claim is due to be dismissed as a matter of law.

CONCLUSION

The Respondents are entitled to a Rule 12 (b) (6), Fed. R. Civ. Proc., dismissal for failure to state a claim upon which relief may be granted concerning Petitioner's claim that his parole may not be revoked due to new criminal offenses that were subsequently dismissed.

As to the remaining claims, the Respondents are entitled to summary judgment as a matter of law (Rule 56, Fed.R.Civ.Proc). The Board's record reflects that all elements of due process were met and the findings are supported by the evidence (testimony of a police officer that had personal knowledge of the events that

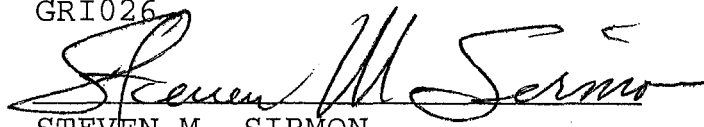
occurred that violated parole). The Court review is limited to the agency's record.

The Respondents/Board therefore move the Court to dismiss this action.

Respectfully submitted,

Troy King
ATTORNEY GENERAL

GREGORY O. GRIFFIN, SR.
CHIEF COUNSEL
GRI026


STEVEN M. SIRMON
ASSISTANT ATTORNEY GENERAL
SIR005

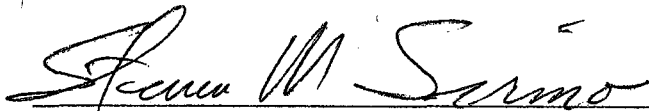
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing, by placing same in the United States Mail, postage prepaid, and properly addressed as follows:

JAMES EDWARD BODY
AIS # 144883
Easterling Correctional Facility
200 WALLACE DRIVE
CLIO, ALABAMA 36017

Done this 13th day of May 2005.

Respectfully submitted,



STEVEN M. SIRMON
ASSISTANT ATTORNEY GENERAL
SIR005

ADDRESS OF COUNSEL:

Alabama Board of Pardons and Paroles
Legal Division
Post Office Box 302405
301 South Ripley Street
Montgomery, Alabama 36130
(334) 242-8700

30
RECEIVED

APR 23 2003

State Board of
Pardons and ParolesSTATE BOARD OF PARDONS AND PAROLES
MONTGOMERY, ALABAMA
REPORT OF PAROLE VIOLATIONDate: March 12, 2003Field Office: MobileName of Parolee James Edward Body No. 144.883Race, Sex & Age BM-49 County of Conviction MobileOffense Unlawful Distribution of Controlled Substance Sentence 20 YEARS PENITENTIARYDate Convicted 4-27-96 Date of Parole 4-3-00Date Sentence Expires 4-8-2016

IF DECLARED DELINQUENT, FORWARD WARRANT TO:

Parole Officer Larry White
Mobile

Level V

County Probation Office
1150 Government St., Suite 209

Supervision Level at Time of Delinquency

P.O. Box or Number & Street
Mobile, Alabama 36604City, State, and Zip Code

CHARGE #1

VIOLATION OF CONDITION #7

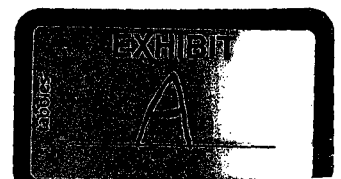
NEW OFFENSE - Possession of a Controlled Substance

LEGAL FACTS:

On March 5, 2003, James Body was arrested by Mobile County Sheriff's Narcotics and Vice Officers and charged with Possession of a Controlled Substance, Trafficking Marijuana, Possession of Marijuana and Certain Persons Forbidden to Posses a Firearm. A Parole Officer's Authorization of Arrest was issued on March 6, 2003 and James Edward Body is currently in Mobile Metro Jail.

DETAILS:

On March 5, 2003, members of the Mobile County Sheriff's Office Narcotic Vice Unit and React Unit served a search warrant at 928 Nellie Street, Mobile, Alabama the residence of James Edward Body. Present during the search was Sergeant Reynolds, Corporal Cuthkelvin, Corporal Blackwell, Deputy Goolsby of the Mobile County Sheriff's Office Narcotics Vice Section along with Sergeant Lamey, Deputy Thornton, Simerson, and the K-9 Officer Housenecht. Upon arrival at 928 Nellie Street the officers made contact and announced police. After entry was made into the residence all subject were read their Miranda rights. A brown paper bag containing approximately \$2,412.00 was taken from the person of James Body. Mr. Body was taken into the residence where he was again advised of his Miranda Rights and a copy of the search warrant was displayed to him. Mr. Body stated that the money was his and he had an additional \$19,000 in his safe.



REPORT OF PAROLE VIOLATION

James Edward Body
AIS#: 144,883

Page 2

A search was conducted which revealed approximately \$27,278.00 in U.S. currency, 1 eight ball cocaine found in the master bedroom by Corporal Blackwell, a Tours .45 caliber revolver was found in the pocket of a black leather jacket in the master bedroom closet by Deputy Law, a Glock 45 caliber pistol was found in the front bedroom by Corporal Blackwell, approximately 2 grams of powder cocaine along with about 2 ounces of marijuana found in a garage area along with assorted documents found throughout the residence.

Deputy Walker questioned Mr. Body about his drug activity and he stated that all the drugs he had was changed into cash meaning that he had sold all the drugs he had on the property. Mr. Body admitted to having up to 70 ounces of cocaine in his possession on the day of the search. Also during the search Deputy Housenecht along with his K-9 conducted a sweep of the property where a black Honda Accord was parked in the driveway of 928 Nellie Street. The vehicle was registered to Ashley Snowden who was being detained inside the residence. The K-9, Otter alerted on the rear trunk area of the Honda indicating the presence of a narcotic odor. A search of the trunk revealed a green storage container containing 4 hard compress bricks weighing approximately 28 pounds of green plant material consistent with that of marijuana and another smaller bag also containing marijuana.

CHARGE #2
VIOLATION OF CONDITION #7
NEW OFFENSE - Trafficking Marijuana

LEGAL FACTS:

Legal facts in charge No. 2 are essentially the same as those in charge No. 1.

DETAILS:

Details in charge No. 2 are essentially the same as those in charge No. 1.

CHARGE #3
VIOLATION OF CONDITION #7
NEW OFFENSE - Possession of Marijuana 1st Degree

LEGAL FACTS:

Legal facts in charge No. 3 are essentially the same as those in charges No. 1 and 2.

DETAILS:

Details in charge No. 3 are essentially the same as those in charges in No. 1 and 2.

REPORT OF PAROLE VIOLATION

James Edward Body
AIS#: 144,883

Page 3

CHARGE #4
VIOLATION OF CONDITION #10
NEW OFFENSE - Certain Person Forbidden to Posses a Firearm

LEGAL FACTS:

Legal facts in charge No. 4 are essentially the same as those in charges No. 1, 2 and 3.

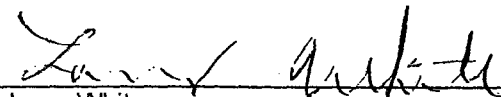
DETAILS:

Details in charge No. 4 are essentially the same as those in charges No. 1, 2 and 3.

RECOMMENDATION:

I recommend that a Parole revocation hearing be held on James Edward Body and his parole be revoked.

Signed and Dated at Mobile, Alabama, this the 12th day of March 2003.



Larry White
Alabama Probation and Parole Officer

LW/ea

Reviewed By: 

Steve Green
District Supervisor

Rec DD
4-23-03
AGC

STATE BOARD OF PARDONS AND PAROLES
MONTGOMERY, ALABAMA

BOARD ACTION ON DELINQUENCY

NAME James Edward Body COUNTY Mobile NUMBER 144,883A

PAROLEE DECLARED DELINQUENT: cmh

Date 4/29/03

STATE BOARD OF PARDONS AND PAROLES

BY:

[Signature: Randy G. Williams]
[Signature: Nancy M. Creamer]

DELINQUENCY VOIDED, WARRANT WITHDRAWN:

ate _____

Continued on Parole _____

STATE BOARD OF PARDONS AND PAROLES

Has effect of discharging from

BY: _____

Sentence and parole _____

Notify: _____

File Closed _____

SPECIAL CONDITIONS AND EMPLOYMENT: _____

REMARKS: _____



BOARD OF PARDONS AND PAROLES NOTICE OF PAROLE COURT HEARING

DATE: March 12, 2003 LOCATION: Mobile County Metro Jail
PAROLEE: James Edward Body # 144, 883

A REPORT OF PAROLE VIOLATION has been prepared dated March 12, 2003 alleging that the parolee whose name and number appear above has violated parole. I have this date provided the parolee with a copy of that report and I have advised the parolee that a PAROLE COURT HEARING will be held to determine if there has been a violation of parole and to receive any evidence or argument that the parolee wishes to offer. I have advised the parolee that (s)he may have his/her witnesses testify at the hearing, may present their written statements, or may present any documents or evidence, may be represented by an attorney, may confront and cross-examine witnesses testifying against the parolee (unless the hearing officer finds good cause for not allowing confrontation), and that the parolee will receive a copy of the hearing officer's report.

THE PAROLE COURT HEARING will be held:

April 8, 2003 10:00 A.M. Mobile Metro Jail
Date Time Place

The Parolee ☒ Does request witnesses be notified to be present for him.

☐ Does Not

The Parolee ☒ Does request an attorney be notified to be present for him.
☐ Does Not

I have received a copy of the REPORT OF PAROLE VIOLATION and this NOTICE which I have read or which has been read to me.

James Edward Body 3/17/03
Parolee James Edward Body Date

I certify that a copy of the REPORT OF PAROLE VIOLATION and this NOTICE was delivered in my present to the parolee.

Larry White 3/17/03
Parole Officer Larry White Date

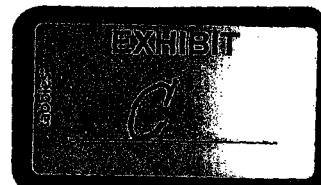
I hereby waive the five day notice of my PAROLE COURT HEARING and request that it be held as soon as possible.

James E Body 3/17/03 Larry White
Parolee James Edward Body Date Witness

ADMISSION OF GUILT: I hereby admit that I am guilty of parole violation as set forth in the Report of Parole Violation in charges # _____ and plan to plead guilty to the same at my parole court hearing.

Parolee James Edward Body Date Witness

Distribution: Original - Hearing Officer; Copy - File; Copy - Parolee



BOARD OF PARDONS AND PAROLES

PAROLE COURT

DATE: 4-8-03 LOCATION: mobilePAROLEE: JAMES E. BODY # 144883HEARING OFFICER: LOWE F. GUINEY☒ ARRESTED AS PAROLE VIOLATOR? ☒ YES ☐ NO (Date) 3-5-03☐ NOTICE OF PAROLE COURT HEARING COMPLETED AND SERVED☒ DID THE PAROLEE REQUEST REPRESENTATION BY AN ATTORNEY? ☒ YES ☐ NO

Comments:

☒ IS AN ATTORNEY PRESENT FOR THE PAROLEE? ☒ YES ☐ NO

Comments:

☐ IF PRO SE, DOES THE PAROLEE APPEAR TO BE COMPETENT? ☒ YES ☐ NO

Comments:

☐ DID THE PAROLEE REQUEST WITNESSES? ☐ YES ☒ NO☒ WERE WITNESSES NOTIFIED TO BE PRESENT? ☐ YES ☒ NO

Comments:

☒ THE PAROLEE WAS ADVISED: YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU. YOU CANNOT BE MADE TO GIVE UP THE RIGHT TO REMAIN SILENT. YOU MAY EXERCISE THE RIGHT TO REMAIN SILENT AT ANY TIME.

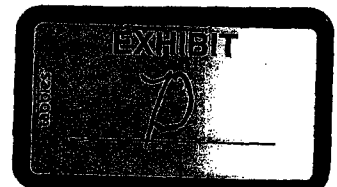
Signed: [Signature]
Parole Court Hearing OfficerDate: 4-8-03

Distribution:

Original - Board

Copy - File

Copy - Parolee



BOARD OF PARDONS AND PAROLES PAROLE COURT

DATE: 4/8/03 LOCATION: MOBILE

PAROLEE: JAMES E. BODY # 144883

HEARING OFFICER: LOUIE F. GRIMES

CHARGE NUMBER: 1 PAROLE CONDITION NUMBER 7

WITNESSES

**THE FOLLOWING WERE HEARD AS WITNESSES AFTER ANSWERING AFFIRMATIVELY TO:
DO YOU SWEAR OR AFFIRM THAT YOU WILL TELL THE TRUTH IN THIS HEARING?**

1. Name/Title JAMES EDWARD BODY – PAROLEE
2. Name/Title LARRY WHITE – PAROLE OFFICER
3. Name/Title CHRIS COUMANIS – ATTORNEY
4. Name/Title ROY CUTHKELVIN – MOBILE COUNTY SHERIFF'S OFFICE
5. Name/Title _____

STATEMENT OF THE EVIDENCE RECEIVED

(list and summarize all evidence received, use attachment if necessary)

CHARGE NUMBER 1:	POSSESSION OF CONTROLLED SUBSTANCE
------------------	------------------------------------

Mr. Body was represented by Attorney Chris Coumanis, who pled him not guilty. Corporal Roy Cuthkelvin testified on 3/5/03, the Mobile County Sheriff's Office Narcotic Vice Unit and React Unit served a search warrant at 928 Nellie Street Mobile, Alabama. This is the home of Mr. Body, the parolee. This Officer stated he was present during the entire search of this property and the following was found: 1 eight ball of cocaine found in the master bedroom; 2 grams of powder cocaine found in another bedroom, 2 ounces of marijuana found in the garage, the parolee also admitted to having 7 ounces of cocaine in his possession the day his house was searched. The parolee told deputies all the drugs he had was turned into cash, meaning he had sold the drugs. Approximately \$27,278.00 in cash was found in the home. Also found in the trunk of a vehicle in Mr. Body's yard was 4 hard compressed bricks weighing approximately 28 pounds, which the Officer stated was marijuana. Also a smaller bag was found in the trunk of the vehicle that contained marijuana. This Officer also testified that a .45 caliber revolver was found in the pocket of a leather jacket located in the master bedroom closet. A Glock .45 caliber pistol was found in another bedroom. This Officer also has audio tapes of Mr. Body since he has been in Mobile-Metro Jail where Mr. Body is talking to his son on the phone telling where more drugs are located in the attic of his home, that the Officers missed, and how to dispose of them. The Officer stated this case will be prosecuted by State and Federal Enforcement. I find Mr. Body guilty of this charge. I relied on the testimony of Officer Cuthkelvin and the facts he presented at this hearing.

- ☒ I FIND THE PAROLEE IS **GUILTY** OF THIS CHARGE OF PAROLE VIOLATION.
- ☐ I FIND THERE IS **INSUFFICIENT EVIDENCE** TO SUPPORT THIS CHARGE OR PAROLE VIOLATION.

Signed: LOUIE F. GRIMES Date: 4/8/03
Parole Court Hearing Officer

Distribution: Original – Board Copy – File Copy – Parolee PB Form 104-A (revised 5/02)

**BOARD OF PARDONS AND PAROLES
PAROLE COURT**DATE: 4/8/03 LOCATION: MOBILEPAROLEE: JAMES E. BODY # 144883HEARING OFFICER: LOUIE F. GRIMESCHARGE NUMBER: 2 PAROLE CONDITION NUMBER 7**WITNESSES****THE FOLLOWING WERE HEARD AS WITNESSES AFTER ANSWERING AFFIRMATIVELY TO:****DO YOU SWEAR OR AFFIRM THAT YOU WILL TELL THE TRUTH IN THIS HEARING?**

1. Name/Title	<u>JAMES EDWARD BODY – PAROLEE</u>
2. Name/Title	<u>LARRY WHITE – PAROLE OFFICER</u>
3. Name/Title	<u>CHRIS COUMANIS – ATTORNEY</u>
4. Name/Title	<u>ROY CUTHKELVIN – MOBILE COUNTY SHERIFF'S OFFICE</u>
5. Name/Title	<u></u>

STATEMENT OF THE EVIDENCE RECEIVED

(list and summarize all evidence received, use attachment if necessary)

CHARGE NUMBER II:	TRAFFICKING IN MARIJUANA
--------------------------	---------------------------------

Attorney Chris Coumanis pled Mr. Body not guilty to this charge. Testimony by Officer Cuthkelvin the same as in Charge # 1. I find Mr. Body guilty on this charge. I relied on the testimony and facts presented by Officer Cuthkelvin. Same as his testimony in Charge # 1.

☒ I FIND THE PAROLEE IS **GUILTY** OF THIS CHARGE OF PAROLE VIOLATION.☐ I FIND THERE IS **INSUFFICIENT EVIDENCE** TO SUPPORT THIS CHARGE OR PAROLE VIOLATION.Signed: LOUIE F. GRIMES Date: 4/8/03
Parole Court Hearing Officer

Distribution:

Original – Board

Copy – File

Copy – Parolee PB Form 104-A (revised 5/02)

BOARD OF PARDONS AND PAROLES PAROLE COURT

DATE: 4/8/03 LOCATION: MOBILE

PAROLEE: JAMES E. BODY # 144883

HEARING OFFICER: LOUIE F. GRIMES

CHARGE NUMBER: 3 PAROLE CONDITION NUMBER 7

WITNESSES

THE FOLLOWING WERE HEARD AS WITNESSES AFTER ANSWERING AFFIRMATIVELY TO:

DO YOU SWEAR OR AFFIRM THAT YOU WILL TELL THE TRUTH IN THIS HEARING?

1. Name/Title JAMES EDWARD BODY – PAROLEE
2. Name/Title LARRY WHITE – PAROLE OFFICER
3. Name/Title CHRIS COUMANIS – ATTORNEY
4. Name/Title ROY CUTHKELVIN – MOBILE COUNTY SHERIFF'S OFFICE
5. Name/Title _____

STATEMENT OF THE EVIDENCE RECEIVED

(list and summarize all evidence received, use attachment if necessary)

CHARGE NUMBER III:	POSSESSION OF MARIJUANA I
--------------------	---------------------------

Mr. Body's attorney pled him out guilty on this charge. Testimony by Officer Cuthkelvin the same as in Charge # 1. I find Mr. Body guilty on this charge. I relied on the testimony and facts presented by Officer Cuthkelvin.

☒ I FIND THE PAROLEE IS **GUILTY** OF THIS CHARGE OF PAROLE VIOLATION.

☐ I FIND THERE IS **INSUFFICIENT EVIDENCE** TO SUPPORT THIS CHARGE OR PAROLE VIOLATION.

Signed: LOUIE F. GRIMES Date: 4/8/03
Parole Court Hearing Officer

Distribution:

- Original – Board
- Copy – File
- Copy – Parolee PB Form 104-A (revised 5/02)

BOARD OF PARDONS AND PAROLES PAROLE COURT

DATE: 4/8/03 LOCATION: MOBILE

PAROLEE: JAMES E. BODY # 144883

HEARING OFFICER: LOUIE F. GRIMES

CHARGE NUMBER: 4 PAROLE CONDITION NUMBER 10

WITNESSES

THE FOLLOWING WERE HEARD AS WITNESSES AFTER ANSWERING AFFIRMATIVELY TO:

DO YOU SWEAR OR AFFIRM THAT YOU WILL TELL THE TRUTH IN THIS HEARING?

1. Name/Title JAMES EDWARD BODY – PAROLEE

2. Name/Title LARRY WHITE – PAROLE OFFICER

3. Name/Title CHRIS COUMANIS – ATTORNEY

4. Name/Title ROY CUTHKELVIN – MOBILE COUNTY SHERIFF'S OFFICE

5. Name/Title _____

STATEMENT OF THE EVIDENCE RECEIVED

(list and summarize all evidence received, use attachment if necessary)

CHARGE NUMBER V:	CERTAIN PERSONS FORBIDDEN TO POSSESS A FIREARM
------------------	--

Mr. Body's attorney pled him not guilty on this charge. Testimony by Officer Cuthkelvin the same as in Charge # 1. I find Mr. Body guilty on this charge. I relied on the testimony and facts presented by Officer Cuthkelvin.

☒ I FIND THE PAROLEE IS **GUILTY** OF THIS CHARGE OF PAROLE VIOLATION.

☐ I FIND THERE IS **INSUFFICIENT EVIDENCE** TO SUPPORT THIS CHARGE OR PAROLE VIOLATION.

Signed: LOUIE F. GRIMES Date: 4/8/03
Parole Court Hearing Officer

Distribution:

Original – Board

Copy – File

Copy – Parolee PB Form 104-A (revised 5/02)

**BOARD OF PARDONS AND PAROLES
PAROLE COURT**DATE: 4/8/03LOCATION: MOBILEPAROLEE: JAMES E. BODY# 144883HEARING OFFICER: LOUIE F. GRIMES**HEARING OFFICER'S FINDINGS AND EVIDENCE RELIED ON: (as to each charge)****CHARGE NUMBER I: POSSESSION OF CONTROLLED SUBSTANCE**

Mr. Body was represented by Attorney Chris Coumanis, who pled him not guilty. Corporal Roy Cuthkelvin testified on 3/5/03, the Mobile County Sheriff's Office Narcotic Vice Unit and React Unit served a search warrant at 928 Nellie Street Mobile, Alabama. This is the home of Mr. Body, the parolee. This Officer stated he was present during the entire search of this property and the following was found: 1 eight ball of cocaine found in the master bedroom; 2 grams of powder cocaine found in another bedroom, 2 ounces of marijuana found in the garage, the parolee also admitted to having 7 ounces of cocaine in his possession the day his house was searched. The parolee told deputies all the drugs he had was turned into cash, meaning he had sold the drugs. Approximately \$27,278.00 in cash was found in the home. Also found in the trunk of a vehicle in Mr. Body's yard was 4 hard compressed bricks weighing approximately 28 pounds, which the Officer stated was marijuana. Also a smaller bag was found in the trunk of the vehicle that contained marijuana. This Officer also testified that a .45 caliber revolver was found in the pocket of a leather jacket located in the master bedroom closet. A Glock .45 caliber pistol was found in another bedroom. This Officer also has audio tapes of Mr. Body since he has been in Mobile-Metro Jail where Mr. Body is talking to his son on the phone telling where more drugs are located in the attic of his home, that the Officers missed, and how to dispose of them. The Officer stated this case will be prosecuted by State and Federal Enforcement. I find Mr. Body guilty of this charge. I relied on the testimony of Officer Cuthkelvin and the facts he presented at this hearing.

CHARGE NUMBER II: TRAFFICKING IN MARIJUANA

Attorney Chris Coumanis pled Mr. Body not guilty to this charge. Testimony by Officer Cuthkelvin the same as in Charge # 1. I find Mr. Body guilty on this charge. I relied on the testimony and facts presented by Officer Cuthkelvin. Same as his testimony in Charge # 1.

CHARGE NUMBER III: POSSESSION OF MARIJUANA I

Mr. Body's attorney pled him out guilty on this charge. Testimony by Officer Cuthkelvin the same as in Charge # 1. I find Mr. Body guilty on this charge. I relied on the testimony and facts presented by Officer Cuthkelvin.

CHARGE NUMBER IV: CERTAIN PERSONS FORBIDDEN TO POSSESS A FIREARM

Mr. Body's attorney pled him not guilty on this charge. Testimony by Officer Cuthkelvin the same as in Charge # 1. I find Mr. Body guilty on this charge. I relied on the testimony and facts presented by Officer Cuthkelvin.

PAGE 2

JAMES E. BODY

MITIGATION: (mitigation presented and the person offering the mitigation)

CHARGE NUMBER I:	POSSESSION OF CONTROLLED SUBSTANCE
-------------------------	---

Mr. Body was advised by his attorney not to make any statement.

CHARGE NUMBER II:	TRAFFICKING IN MARIJUANA
--------------------------	---------------------------------

Mr. Body was advised by his attorney not to make any statement.

CHARGE NUMBER III:	POSSESSION OF MARIJUANA I
---------------------------	----------------------------------

On advise of his attorney, Mr. Body chose not to make a statement.

CHARGE NUMBER V:	CERTAIN PERSONS FORBIDDEN TO POSSES A FIREARM
-------------------------	--

On advise of his attorney, Mr. Body chose not to make a statement.

RECOMMENDATIONS: (considering all the findings, supporting evidence, and mitigation)

Mr. Body has served four years in prison for these same type charges. He is believed by law enforcement in the Mobile area to be a major drug dealer. They very much want him off the street. I recommend to the Board that Mr. Body be revoked and re-set 4/07.

Signed: LOUIE F. GRIMES
Parole Court Hearing Officer

Date: 4/8/03

Distribution:

Original – Board

Copy – File

Copy – Parolee

**STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES**

ACTION OF THE BOARD SUBSEQUENT TO PAROLE COURT

PAROLEE: James Edward Body AIS # 144,883

Parole Court was held before Louie Grimes, Hearing Officer, on 4/8/03, at Mobile, Alabama. The Hearing Officer has filed a Report and Recommendation, as required by statute, and this Board has reviewed the detailed statement of evidence, the findings, and the reasons supporting those findings, which were:

CHARGES PROVEN. The Hearing Officer has determined that Charge(s) # _____ was/were proven to his reasonable satisfaction. His Report and Recommendation addressed the evidence of mitigating circumstances, as well as the evidence that conditions of parole were violated. The record further reflects that an acceptable parole plan is in place which offers the parolee a reasonable possibility of living and remaining at liberty without violating the law. It is, therefore, recommended that Parolee be RE-INSTATED to a satisfactory program.

It is recommended that the following additional conditions be imposed to improve the likelihood that the parolee will remain at liberty without violating the law:

X CHARGES PROVEN. The Hearing Officer has determined that Charge(s) # 1,2,3+4 was/were proven to his reasonable satisfaction. His Report and Recommendation addressed the evidence of mitigating circumstances, as well as evidence that conditions of parole were violated. It is, therefore, recommended that parole be REVOKED in this case.

Comes now the Board of Pardons and Paroles at Open Public Meeting, and after considering all evidence from Parole Court, including any mitigating circumstances, orders:

BOARD INITIALS

Continued to _____ (date)

Taken under advisement

That parole be REVOKED and given further consideration in 4-07.

That parole be revoked since a satisfactory plan has not been submitted within a reasonable amount of time and for reasons addressed in parole court and given further consideration in _____.

That the order of delinquency is void and parolee is RE-INSTATED on parole with the following SPECIAL CONDITIONS: _____

Distribution Date 5-16-03 to:

Original - Board File
Parole Office Mobile - White

3
CO Form 013 - A (Rev. 10-99)

James V. Williams
Chairman of the Board 5-14-03 Date

Member of the Board [Signature] Date
Member of the Board [Signature]



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY ALABAMA

JAMES EDWARD BODY

V.

CASE NO.CV-2005-000652.00

ALABAMA BOARD OF PARDONS
AND PAROLES

APPLICATION TO CLERK FOR ENTRY OF
DEFAULT AND SUPPORTING AFFIDAVIT

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 MAY 17 AM 10:05

COME NOW THE PETITIONER JAMES E. BODY AND WOULD REQUEST THAT THE
ENTRY OF DEFAULT BE ENTERED AGAINST THE DEFENDANTS PURSUANT TO RULE
56 ALABAMA RULES OF APPELLATE PROCEDURE AND SO SAYS AS FOLLOWS:

This case is set for a hearing on
June 30, 2005, at
1:30 am/pm
William A. Shashy, Circuit Judge

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 MAY 27 AM 9:00

JAMES E. BODY #144883
EASTERLING CORR.FACILITY
200 WALLACE DR.CLIO,AL.36017

Donald Briskman ✓

Eve Simon ✓

RULE 55(a) ALABAMA RULES OF CIVIL PROCEDURE;

WHEN A PARTY AGAINST WHOM A JUDGMENT FOR AFFIRMATIVE RELIEF IS SOUGHT HAS FAILED TO PLEAD OR OTHERWISE DEFEND AS PROVIDED BY THESE RULES, AND THAT FACT IS MADE TO APPEAR BY AFFIDAVIT OR OTHERWISE, THE CLERK SHALL ENTER A DEFAULT.

RULE 55(a) AUTHORIZES THE CLERK TO ENTER DEFAULT UPON THE CIVIL DOCKET WHEN THE PARTY FAILS "TO PLEAD OR OTHERWISE DEFEND".

ON MARCH 29, 2005 THIS HONORABLE COURT BY AND THROUGH THE HONORABLE MELISSA RITTENOUR CIRCUIT COURT CLERK MONTGOMERY ALABAMA, ISSUED A CIVIL SUMMONS TO THE ALABAMA BOARD OF PARDONS AND PAROLE DEFENDANTS. RECEIVED BY "E. URGHART" IN MONTGOMERY COUNTY ALABAMA ON MARCH 31, 2005.

STATING, TO THE ABOVE NAMED DEFENDANT;

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING ALLEGATIONS IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY SHOWN ABOVE OR ATTACHED. PRO-SE

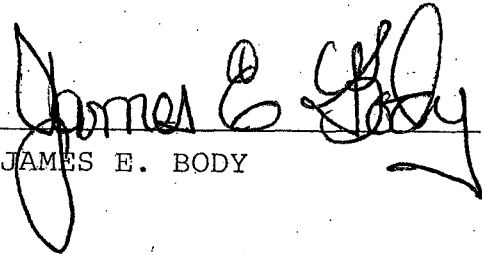
THE DEFENDANTS HAVE NOT RESPOND EITHER ADMITTING NOR DENYING THE ALLEGATIONS IN THE COMPLAINT THEREFORE THE DEFENDANTS HAVE WAIVED THEIR RIGHTS TO RESPOND IN ACCORD WITH RULE 56(c) ALABAMA RULES OF CIVIL PROCEDURE.

DEFAULT JUDGMENT ENTERED AGAINST A DEFENDANT DUE TO HIS FAILURE TO RESPOND TO THE PLAINTIFF'S ACTION OR TO APPEAR AT THE TRIAL; "ONE TAKEN AGAINST A DEFENDANT WHO, HAVING DULY BEEN SUMMONED IN ACTION, FAILS TO ENTER AN APPEARANCE IN TIME " 80 N.W.2d, 533; JUDGMENT GIVEN WITHOUT THE DEFENDANT BEING HEARD IN HIS OWN DEFENSE 303 A.2 Nd. 139, 140

RELIEF SOUGHT

THE DEFENDANT PRAYS THAT THIS HONORABLE COURT WOULD REVIEW THE COMPLAINT AND WEIGH THE FACT THAT THE DEFENDANTS HAS WAIVED THEIR RIGHT TO RESPOND AS ORDERED BY THE COURT. AND GRANT HIM THE RELIEF HE SEEKS REINSTATING HIM ON PAROLE STATUS.

RESPECTFULLY THIS THE 16th DAY OF MAY 2005.


JAMES E. BODY

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY ALABAMA

V. ALABAMA BOARD OF PARDONS
AND PAROLE

XXX FOR E

BEFORE ME THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE OF ALABAMA AT LARGE PERSONALLY APPEARED JAMES E. B...
WHO BEING KNOWN TO ME AND BEING BY ME FIRST DULY SWORN, DEPOSES AND
SAYS UNDER OATH AS FOLLOWS:

MY NAME IS JAMES E. BODY I AM PRESENTLY AN INMATE IN THE ALABAMA
DEPARTMENT OF CORRECTION EASTERLING CORRECTION FACILITY 200 WALLACE
DR. CLIO,ALABAMA 36017.

I RECEIVED A COPY OF A CIVIL SUMMONS FROM THE CIRCUIT COURT ADVISING THE DEFENDANTS OF THEIR RIGHT TO RESPOND TO MY COMPLAINT WITHIN 30 DAYS OR JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST THEM. THEY HAVE NOT RESPOND AS OF THIS DAY MAY 12, 2005.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 4th DAY MAY 2005.

James E. Boyd

MY COMMISSION EXPIRES 5-7-2006

Bro. K. E. Ewing

NOTARY

0/30/05 status 47

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JAMES EDWARD BODY, #144883
PETITIONER.

CASE NO. CV-05-652

Vs.

ALABAMA BOARD OF PARDONS
AND PAROLES.

RESPONDENTS.

2005 MAY 26 AM 11:10

OBJECTION, AND MOTION
FOR IMMEDIATE HEARING REQUESTED

Comes now the petitioner, James Body, in the above styled cause, pro-se, objecting to the ALABAMA BOARD OF PARDONS AND PAROLES, motion to dismiss the writ of certiorari and respectfully requests a hearing on this matter and as grounds therefore avers and says as follow.

That the dismissal of the writ of certiorari is ver much predjudical to the petitioner. The petitioner has stated his innocence from day one. The Board and it's attorneys has not accepted and acknowledged the innocence and it is very unprofessional that they have not. The petitioner was falsely arrested, but the arrest was baseless from the start. Hearing officer, Louie F. Grimes stated in his recommendation, "considering all the finding, supporting evidence, and mitigation", Mr. Body served four years in prison for these same charges which are now dismissed, abused his distretion by admitting evidence of prior bad acts. Ala. R. Crim. Pr. rule 404 (b). The petitioner was being a well respected buisnessman as well as a productive citizen. In Alabama, parolee's are highly targeted by law enforcement officials because, they know being on parole makes their jobs alot easier to get paroled offenders off the street. The petitioner had no knowledge of the gun his daughter had in her room, nor the gun she had in her purse.

NO Knowledge of the merijuana, in the trunk of Mr. Ashley Snowden's black da accord, which she clearly has owned up to, and definately no knowledge of 70 ounces of cocaine, allegedly in his possession, the day of the search. Deputy Walker, went beyond becoming an officer in his official capacity, with the lies that he cleary had told, which clearly exist. What the Parole Board and their attorneys are overlooking is the fact that the petitioner was being lied on mainly to get currency, that was legally earned. Narcotics all over Alabama are doing many parolee's, the same way, "LYING TO GET THEM OFF THE STREETS." But no one respects the truth. Prisons are full of Parolee's, with the same exact problems which clearly exists. Somebody has got to come to conclusion that whats alledged in this motion is true. Officer Roy Cuthkevin, lied under oath as well as his fellow employee's, to get the petitioners parole revoked. He even claimed to have had audio tapes of the petitioner, while he was in the Mobile metro jail, all has came up to nothing more than a bag of lies, thats been prooven fruits of a poisonous tree in the courts. Thats why charges were dismissed upon the petitioner, but the situation in which the petitioner is in is a numerous claim upon many more "returned" lee's, the same exact problem, that is destroying the lives of honest released individuals. Due process has not been met and this claim is not frivolous, and need not to be dismissed, as a matter of law.

The petitioner is entitled to a hearing on this matter. What is the burden is officers do lie to cover up their mistakes as what has happened in this instant case at hand. Law enforcement is highly respected but some officers will tell a lie deliberately and sleep on it at the same time, as what has happened in this case. The charges that were filed have all been dismissed against the petitioner, "why", because he was innocent from the start as he first claimed, and Mobile County Sherriffs office knew it. Lets use the common sense standard, and take a closer look to the case itself. Please review Mr. Body's claim further than meets the eye. The petitioner moves this court not to dismiss his writ, as a matter of law.

Therefore, the petitioner prays that a hearing is conducted without a dismissal at hand.

I swear that the foregoing is true and correct.

Done this 24 day of May 2005.

James E. Body

JAMES E. BODY #144883

Sworn and subscribed before me this 24 day of May 2005.

Bryce K. Danning
NOTARY PUBLIC

2005 JUN 27 PM 12:59

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

James Edward Body,

Plaintiff.

v.

) *Case No. CV - 2005 - 652*Alabama Board Of
Pardons and Paroles,

Defendant.

OBJECTION AND REQUEST

FOR IMMEDIATE HEARING

Comes now the plaintiff in the above styled cause, Pro-se, and objects to the Alabama Board of Pardons and Paroles Motion to squash subpoena, and respectfully request a hearing on this matter, and as grounds therefor avers and says as follows:

1. That the subpoena as issued is very specific and does not pose an undue burden on the recipient, Alabama Board Of Pardons And Paroles. Such requests are routinely filed and responded to in civil actions.
2. That the plaintiff is not seeking discovery from a part, but discovery from an legislative agency. The matter sought is relevant and material to the plaintiffs defense on what actually occurred on 6-3-05.
3. The appellant courts of this state questions whether administrative agencies has acted within their constitutional and statutory powers from permitting records to be examined if actions are not arbitrary.

- ④ The plaintiff has proof that officer Roy Cutthrein Violated 13A-10-102 Ala. Code 1975 by giving false statements at the plaintiff's parole hearing and the plaintiff has been showing this since day one. The tape is relevant to this proceeding.
- ⑤ The plaintiff would like to state the Law of Ala. Code 13A-10-102 (1975). (a) A person commits the crime of perjury in the second degree when he swears with intent to mislead a public servant in the performance of his duty and his false statement is material to the action, proceeding or matter involved. "This is exactly what happened at the plaintiff's Parole hearing."
- ⑥ Ex. 1, shows a recent Mobile Register newspaper article about the arresting officer in the Plaintiff's case. "Roy Cutthrein". This newspaper article is dated June 16th 2005. This article shows what the plaintiff has alleged since day one. That officer "Roy Cutthrein" will lie in his official Capacity under Oath. He lied to Federal Authorities. He is not employed in the narcotics dept. anymore because of his unprofessional conduct, He was found guilty of conduct unbecoming an employee.
- ⑦ The plaintiff pled for Alabama Board of Pardon and Paroles to believe his innocence from day one & the record will show the same.

- ⑧ The defendant requests a hearing on this matter at the court's earliest convenience.

Wherefore, the Subpoena set forth by the plaintiff should issue, and the Motion to quash the Subpoena should not.

James E. Boon
"respectfully submitted"

Sworn to and subscribed before me this 22nd day of June 2005
[Signature]

Certificate of Service my commission expires March 18, 2007
NOTARY

I do hereby certify that I have on this 22 day of June 2005, served a copy of the foregoing document by 1st class mail on the Alabama Board of Pardon and Parole Legal Division Post office Box 302405, S. Ripleys Street Montgomery, AL 36130

Ex. 1

Lawman suspended for having sex with informant

► Sheriff's corporal
was once named
Deputy of the Year

By SUSAN DAKER
Staff Reporter

A Mobile County sheriff's corporal once cited as Deputy of the Year was suspended for 30 days this year for having sex with a woman identified in Personnel Board records as being an FBI drug informant, documents show.

Sheriff Jack that Roy Cuthkelvin, 45, admitted that he "willfully and inappropriately had a sexual relationship," with the woman on or about Oct. 10, 2004.

Cuthkelvin, who a sheriff's office spokeswoman said is now in the department's civil section, could not be reached for comment Wednesday.

At the time of the relationship, the woman was awaiting court proceedings on a drug arrest made by the sheriff's office; she was also helping with an ongoing drug investigation, according to a letter from Tillman included in Cuthkelvin's Personnel Board file.

"We consider the charges very serious," said Christina Bowersox, the sheriff's spokeswoman. Cuthkelvin acknowledged the severity of the departmental charges as well in pleading guilty to them,

Please see Page 4A ►

Corporal hit with 30-day suspension

► Continued from Page 1A

Bowersox said.

Cuthkelvin was found to be guilty of conduct unbecoming an employee in the public service and disorderly or immoral conduct.

Cuthkelvin, a member of the FBI Violent Crimes Task Force when the incident took place, allegedly denied the relationship to FBI Assistant Special Agent-in-Charge Bill Lewis and Sheriff's Lt. Michael Reynolds on or about Oct. 14, a letter said.

Cuthkelvin left the task force — a group of federal, state and local law enforcement agents who work out of the FBI office — on or about Oct. 25, said Craig Dahle, FBI spokesman in Mobile.

"I can't comment on what, if any, impact he would have had on any cases," Dahle said. Any decisions about whether a member of the task force should be removed is up to the agency they work for, he said.

Dahle said "it was troublesome," that a woman was labeled as an FBI informant in a public document on file at the Mobile County Personnel Board. He said he could not comment on whether a person is an informant or not.

The sheriff's spokeswoman said Wednesday that the department erred in naming the informant in the document and will take immediate steps to have the name stricken.

On Aug. 13, sheriff's deputies executed a warrant to search the informant's home, and the woman was arrested for possession of cocaine, records show. In a signed deposition, Deputy Clinton Law said the informant claimed that some of cocaine in the home belonged to her.

A man was arrested during the search and charged with obstructing justice by using a false identity and with posses-

sion of cocaine, records show.

In November, the case against the Prichard woman was not pressed, meaning a decision was made not to prosecute the charges, according to court records.

Bowersox said she did not believe Cuthkelvin's involvement with the informant affected the outcome of the state case against her because he was not involved in her arrest. Cuthkelvin began his suspension without pay Jan. 1, according to the records.

One of Tillman's letters to Cuthkelvin said, "You are admonished that any further acts of misconduct on your part will be dealt with most severely and may result in your being dismissed for cause."

In addition to being named Deputy of the Year in 2001, Cuthkelvin, an 11-year veteran of the department and a former Marine, received other awards for his service.

He was shot during a raid of a methamphetamine lab in Theodore in 2002, the Register reported then. Cuthkelvin was hit in the groin, suffered no major injuries and was discharged from the hospital the day after the shooting, the Register reported.

In connection with the shooting, Gerald Eugene Bennett of Theodore was convicted in federal court of several charges, including attempted murder of a law enforcement officer and conspiring to manufacture meth, records show. Bennett was sentenced to 34 years in federal prison.

In December 2003, Bennett also pleaded guilty in Mobile County Circuit Court to the attempted murder of Cuthkelvin and was sentenced to 10 years in prison to be served concurrently with the federal sentence, the Register reported.

IN THE CIRCUIT OF MONTGOMERY COUNTY ALABAMA

JAMES Edward Body,
Petitioner,

V.

CASE Number CV-05-652

STATE OF Alabama,
Board of Pardons and Parole,
Respondent.

SUBPOENA REQUEST FORM

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2006 JUN - 2 PM 12:45

In the matter of JAMES Edward Body v. STATE OF Alabama
BOARD OF PARDONS AND PAROLE, CASE NUMBER CV-05-652, Petition For
Writ of Certiorari in the Circuit Court of Montgomery County
Alabama.

Come now the Petitioner JAMES Edward Body, and would request
this Honorable Court by way of Subpoena Duces Tecum, to compel
the Respondents Alabama Board of Pardons and Parole to provide as
follows:

1. PURSUANT to RULE 44(a) ALABAMA RULES OF CIVIL PROCEDURE PROOF OF
DOCUMENTS. In particularly the hearing held by Factfinder;
Original RECORDS RECORDINGS, Etc,

2. RULE 44(d) ALABAMA RULES OF CIVIL PROCEDURE Original Documents,
IF A DOCUMENT HAS BEEN ALTERED, OR IT APPEARS TO HAVE BEEN ALTERED,
AFTER ITS EXECUTION, IN A PART MATERIAL TO THE QUESTION IN DISPUTE
THE PARTY PRODUCING THE WRITING AS GENUINE MUST ACCOUNT FOR THE
APPEARANCE OF ALTERATION. . . .

THE CLERK IS REQUESTED TO ISSUE AN ORDER (SUBPOENA) FOR THE
PAROLE COURT PRELIMINARY HEARING. OFFICER LOUIS GRIMES TO
PRODUCE THE ORIGINAL TRANSCRIPTS OF THE PRELIMINARY HEARING
AND TAPE RECORDINGS.

LOUIS GRIMES. DATE ISSUED _____ . DATE EXECUTED _____

REMARKS _____

ADDRESS ALABAMA BOARD OF PARDONS AND PAROLE LEGAL DIVISION
POST OFFICE BOX 302405, 301 SOUTH RIPLEY STREET MONTGOMERY,
ALABAMA 36130

THE PETITIONER REQUEST THAT THE CLERK PERMIT THE PROCESSING, AND
SERVICE FEES IN REGARD TO HIS HARDSHIP APPLICATION OR TAX COST
TO BE RESOLVED AT THE ENDING OF SAID PROCEEDINGS AS THE CLERK
SEE FIT.

PARTY REQUESTING SUBPOENA JAMES E. Body #144883
James E. Body
SIGNED

RESPECTFULLY: DATE 6-1-05

CLERK OR REGISTER

State of Alabama
Unified Judicial SystemForm C-10
Page 1 of 2

Rev. 2/95

**AFFIDAVIT of SUBSTANTIAL
HARDSHIP and ORDER**

Case Number

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALABAMA
(Circuit, District, or Municipal) (Name of County or Municipality)STYLE OF CASE: JAMES EDWARD BODY v. STATE OF AL. BOARD OF PARDON & PAROLES
Plaintiff(s) Defendant(s)TYPE OF PROCEEDING: REL. WRIT OF CERTIORARI CHARGE(s) (if applicable):
SUBPOENA REQUEST

- ☒ CIVIL CASE-- I, because of substantial hardship, am unable to pay the docket fee and service fees in this case. I request that payment of these fees be waived initially and taxed as costs at the conclusion of the case.
- ☐ CIVIL CASE--(such as paternity, support, termination of parental rights, dependency) - I am financially unable to hire an attorney and I request that the Court appoint one for me.
- ☐ CRIMINAL CASE--I am financially unable to hire an attorney and request that the Court appoint one for me.
- ☐ DELINQUENCY/NEED OF SUPERVISION - I am financially unable to hire an attorney and request that the Court appoint one for my child/me.

SECTION I.

AFFIDAVIT

1. IDENTIFICATION

Full Name JAMES Edward Body Date of Birth 3-2-54

Spouse's Full Name (if married) _____

Complete Home Address _____

Number of People Living in Household _____

Home Telephone No. _____

Occupation/Job _____ Length of Employment _____

Driver's License Number _____ * Social Security Number 49-76-6120

Employer _____ Employer's Telephone No. _____

Employer's Address _____

2. ASSISTANCE BENEFITS

Do you or anyone residing in your household receive benefits from any of the following sources? (if so, please check those which apply.)

☐ AFDC
☐ Food Stamps
☐ SSI
☐ Medicaid
☐ Other _____

3. INCOME/EXPENSE STATEMENT

Monthly Gross Income:

Monthly Gross Income \$ 0

Spouse's Monthly Gross Income (unless a marital offense) _____

Other Earnings: Commissions, Bonuses, Interest Income, etc. _____

Contributions from Other People Living in Household _____

Unemployment/Workmen's Compensation, _____

Social Security, Retirement, etc. _____

Other Income (be specific) 0 _____

TOTAL MONTHLY GROSS INCOME

\$ 0

Monthly Expenses:

A. Living Expenses

Rent/Mortgage

Total Utilities: Gas, Electricity, Water, etc.

Food

Clothing

Health Care/Medical

Insurance

Car Payment(s)/Transportation Expenses

Loan Payment(s)

\$ 0

Form C-10

Page 2 of 2

Rev. 2/95

AFFIDAVIT of SUBSTANTIAL HARDSHIP and ORDER

Case Number

Monthly Expenses: (cont'd from page 1)

Credit Card Payment(s) _____

Educational/Employment Expenses _____

Other Expenses (be specific) _____

Sub-Total _____

A \$ _____

B. Child Support Payment(s)/Alimony \$ _____

Sub-Total _____

B \$ _____

C. Exceptional Expenses \$ _____

TOTAL MONTHLY EXPENSES (add subtotals from A & B monthly only) \$ _____

Total Gross Monthly Income less total monthly expenses:

DISPOSABLE MONTHLY INCOME \$ _____

4. LIQUID ASSETS:

Cash on Hand/Bank (or otherwise available such as stocks, bonds, certificates of deposit) \$ _____

Equity in Real Estate (value of property less what you owe) _____

Equity in Personal Property, etc. (such as the value of motor vehicles, stereo, VCR, furnishings, jewelry, tools, guns less what you owe) _____

Other (be specific) Do you own anything else of value? ☐ Yes ☐ No

(land, house boat, TV, stereo, jewelry) _____

If so, describe _____

TOTAL LIQUID ASSETS \$ _____

5. Affidavit/Request

I swear or affirm that the answers are true and reflect my current financial status. I understand that a false statement or answer to any question in the affidavit may subject me to the penalties of perjury. I authorize the Court or its authorized representative to attain records or information pertaining to my financial status from any source in order to verify information provided by me. I further understand and acknowledge that, if the Court appoints an attorney to represent me, the Court may require me to pay all or part of the fees and expenses of my court-appointed counsel.

Sworn to and subscribed before me this

31 day of May 2005

Judge/Clerk/Notary

Affiant's Signature

Print or Type Name

SECTION II.

ORDER OF COURT

IT IS THEREFORE, ORDERED AND ADJUDGED BY THIS COURT AS FOLLOWS:

☐ Affiant is not indigent and request is DENIED.

☐ Affiant is partially indigent and able to contribute monetarily toward his defense; therefore, defendant is ordered to pay \$ _____ toward the anticipated cost of appointed counsel. Said amount is to be paid to the Clerk of Court or as otherwise ordered and disbursed as follows: _____

☐ Affiant is indigent and request is GRANTED.☐ The prepayment of docket fees is waived.

IT IS FURTHER ORDERED AND ADJUDGED that _____, is hereby appointed as counsel to represent affiant.

IT IS FURTHER ORDERED AND ADJUDGED that the Court reserves the right and may order reimbursement of attorney's fees and expenses, approved by the Court and paid to the appointed counsel, and costs of court.

Done this _____ day of _____, 19 _____.

State of Alabama
Unified Judicial System**SUMMONS**
- CIVIL -

Case Number

Form C-34 Rev 6/88

LV-05-652

IN THE Circuit COURT OF MONTGOMERY COUNTYPlaintiff JAMES E BODYv. Defendant STATE OF ALABAMA
BOARD PARDON + PAROLES**NOTICE TO**

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY JAMES E BODY WHOSE

ADDRESS IS EASTERN CORP. FAC 200 WALLACE DR. CLD, ALA 36017

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure

☐ You are hereby commanded to serve this summons and a copy of the complaint upon the defendant.

☒ Service by certified mail of this summons is initiated upon the written request of the Plaintiff pursuant to the Alabama Rules of Civil Procedure.

Date 6-1-05

Clerk/Register

☒ Certified Mail is hereby requested.James E Body
Plaintiff's/Attorney's Signature**RETURN ON SERVICE:**

☐ Return receipt of certified mail received in this office on _____ (Date)

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ County, Alabama on _____ (Date)

Date

Server's Signature

Address of Server

Type of Process Server

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JAMES EDWARD BODY,

Plaintiff,

v.

STATE OF ALABAMA,

Defendant.

*
*
*
*
*
*
*
*
*

CASE NO. CV-2005-652

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 JUN 14 PM 3:39MOTION TO QUASH SUBPOENA

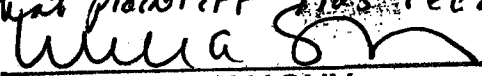
COMES NOW the Alabama Board of Pardons and Paroles, by and through counsel, a non-party in the above-styled cause, and in response to the subpoena ordering production of documents dated 6-3-05, and shows unto the Court as follows:

1. Records and files prepared by State Probation and Parole Officers for use by the Board of Pardons and Paroles are privileged by statute, §15-22-36(b), Ala Code 1975. The Alabama Supreme Court held that parole files are absolutely privileged, *Ex parte Alabama Bd of Pardons and Paroles*, 814 So.2d 870 (Ala. 2001). The Board cannot waive its statutory privilege in relation to its parole files.

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 JUN 21 PM 4:07

GRANTED

DATE

Based upon defendant's representation that plaintiff has rec'd report.

 WILLIAM A. SHASHY
 CIRCUIT JUDGE

Donald Briskman ✓
 Steve Sirmon ✓

2. In relation to probation records, §15-22-53(b), Ala. Code 1975, states: "[A]ll reports, records and data assembled by any probation officer and referred to the court shall be *privileged* and shall not be available for public inspection except upon order of the court to which the same was referred". The Board is not at liberty to release probation records without a court order, as prescribed in §15-22-53(b), Ala. Code 1975.


3. Plaintiff seeks records that have already been sent to him pursuant to the Agency's revocation process and the Agency's compliance with *Morrissey v. Brewer*, 408 U.S. 471, (1972); *Horace Johnson v. State*, 729 So.2d 897 (Ala.Crim.App.1997).

WHEREFORE THE PREMISES CONSIDERED, the subpoena for production of documents dated 6-3-05, is due to be QUASHED.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL

GREGORY O. GRIFFIN, SR.
CHIEF COUNSEL
GRI026


STEVEN M. SIRMON
ASSISTANT ATTORNEY GENERAL
SIR005

61

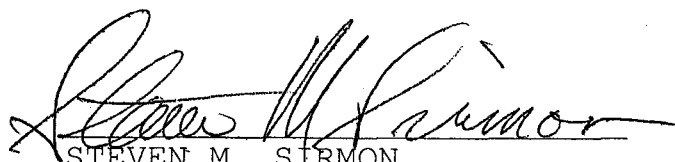
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing, by placing same in the United States Mail, postage prepaid, and properly addressed as follows:

JAMES EDWARD BODY
AIS# 144883
EASTERLING CF
200 WALLACE DRIVE
CLIO, AL 36017

Done this 14~~th~~ day of June 2005.

Respectfully submitted,



STEVEN M. SIRMON
ASSISTANT ATTORNEY GENERAL
SIR005

ADDRESS OF COUNSEL:

Alabama Board of Pardons and Paroles
Legal Division
Post Office Box 302405
301 S. Ripley Street
Montgomery, Alabama 36130
(334) 242-8700

62

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

JAMES EDWARD BODY,
AIS # 144883
Petitioner,

Vs.

STATE OF ALABAMA BOARD
OF PARDONS & PAROLES

Respondent.

CASE NO. CV 05-652

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 JUN 24 AM 10:46

FINAL ORDER

The Petitioner comes challenging the Alabama Board of Pardons and Paroles actions in revoking his parole. The law in Alabama is well settled that judicial review of a Parole Board action is by writ of certiorari. The standard of review for certiorari limits the scope of review to questions of law and does not extend to review of the weight and preponderance of the evidence. *Sanders v City of Dothan*, 642 So.2d 437 (Ala. 1994).

Petitioner claims he was denied due process by not being afforded a copy of the parole court hearing officer's report and not being allowed to cross-examine witnesses testifying against him.

Petitioner further claims due process violations resulting from being revoked due to new criminal charges that were dismissed.

The Court having reviewed Petitioner's complaint and the Board's response is of the following opinion:

Petitioner's claim that he was denied a copy of the parole court hearing officer's report may be a valid claim, but has now been made moot. The Board filed a copy of that report with their answer to this court and served Petitioner a copy. The Respondents revocation record (Parole Court report) also shows the "parolee" on the distribution list to receive a copy of that report.

Petitioner's claim that he was deprived of the right to cross-examine witnesses testifying against him is without merit. The Parole Court report indicates Petitioner was represented by an attorney and offered the opportunity to mitigate the charges against him. This record indicates Petitioner made no statement upon advice of counsel.

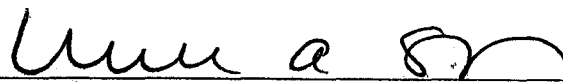
The Board's revocation record appears to contain no procedural defect that violates the Morrissey due process standard. Under a "reasonably satisfied" standard there appears to have been sufficient evidence offered for a hearing officer to find that parole was violated.

Petitioner's claim that his due process rights were violated when he was revoked because of a new criminal charge that was dismissed, is also without merit. This issue was settled in *Crowe v. State*, 671 So.2d 1112, Ala.Crim.App.1995 and *Johnson v. State*, 240 Ga. 526 (Ga. 1978), cert. denied, 439 U.S. 881 (1978).

The lack of a conviction on a new criminal offense does not preclude probation or parole from being revoked. *Morrissey v. Brewer*, 408 U.S. 471 (1972) only requires a parolee be provided a due process hearing and that the hearing officer be "reasonably satisfied" that the parolee's conduct violated a condition of parole.

It is, therefore, **ORDERED, ADJUDGED and DECREED**, that this action is due to be dismissed for lack of a genuine issue as to any material fact and the Board is entitled to judgment as a matter of law.

Done this 24 day of May 2005.



WILLIAM A. SHASHY
Circuit Judge

James E. Body ✓

Donald Briskman ✓

Steve Sirmon ✓

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

JAMES EDWARD BODY,
 AIS # 144883
 Petitioner,

Vs.

STATE OF ALABAMA BOARD
 OF PARDONS & PAROLES

Respondent.

CASE NO. CV 05-652

2005 JUL - 1 AM 8:39

FILED
 CIRCUIT COURT OF
 MONTGOMERY COUNTY

FINAL ORDER

The Petitioner comes challenging the Alabama Board of Pardons and Paroles actions in revoking his parole. The law in Alabama is well settled that judicial review of a Parole Board action is by writ of certiorari. The standard of review for certiorari limits the scope of review to questions of law and does not extend to review of the weight and preponderance of the evidence. *Sanders v City of Dothan*, 642 So.2d 437 (Ala. 1994).

Petitioner claims he was denied due process by not being afforded a copy of the parole court hearing officer's report and not being allowed to cross-examine witnesses testifying against him.

Petitioner further claims due process-violations resulting from being revoked due to new criminal charges that were dismissed.

The Court having reviewed Petitioner's complaint and the Board's response is of the following opinion:

Petitioner's claim that he was denied a copy of the parole court hearing officer's report may be a valid claim, but has now been made moot. The Board filed a copy of that report with their answer to this court and served Petitioner a copy. The Respondents revocation record (Parole Court report) also shows the "parolee" on the distribution list to receive a copy of that report.

Petitioner's claim that he was deprived of the right to cross-examine witnesses testifying against him is without merit. The Parole Court report indicates Petitioner was represented by an attorney and offered the opportunity to mitigate the charges against him. This record indicates Petitioner made no statement upon advice of counsel.

The Board's revocation record appears to contain no procedural defect that violates the Morrissey due process standard. Under a "reasonably satisfied" standard there appears to have been sufficient evidence offered for a hearing officer to find that parole was violated.

Petitioner's claim that his due process rights were violated when he was revoked because of a new criminal charge that was dismissed, is also without merit. This issue was settled in *Crowe v. State*, 671 So.2d 1112, Ala.Crim.App.1995 and *Johnson v. State*, 240 Ga. 526 (Ga. 1978), cert. denied, 439 U.S. 881 (1978).

The lack of a conviction on a new criminal offense does not preclude probation or parole from being revoked. *Morrissey v. Brewer*, 408 U.S. 471 (1972) only requires a parolee be provided a due process hearing and that the hearing officer be "reasonably satisfied" that the parolee's conduct violated a condition of parole.

It is, therefore, **ORDERED, ADJUDGED and DECREED**, that this action is due to be dismissed for lack of a genuine issue as to any material fact and the Board is entitled to judgment as a matter of law.

Done this 30 day of June 2005.

William A. Shashy
WILLIAM A. SHASHY
Circuit Judge

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 JUL -1 AM 8:39

James Body ✓
Steve Seamon ✓

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JAMES EDWARD BODY#
PLAINTIFF.)

V.)

CASE NO: CV-05-000652.00

ALABAMA BOARD OF PARDONS
AND PAROLES.)

NOTICE OF APPEAL

PETITIONER HEREBY GIVES NOTICE OF APPEAL FROM SUMMARY DISMISSAL OF HIS WRIT OF CERTIORARI PETITION. CV-000⁶⁵² 05, TO THE ALABAMA COURTS OF CRIMINAL APPEALS, AND PURSUANT TO ALABAMA RULES OF CRIMINAL PROCEDURE.

1. Date writ of certiorari filed. 3-7-05
2. Date dismissed. 6-24-2005
3. Date of notice of appeal. 6-29-05
4. Indigent. yes
5. Date. 6-29-05

James E Body 6-29-05

I swear that the foregoing is true and correct on the 29th day of June 2005.

Sworn and subscribed before me this 29th day of June 2005.

CERTIFICATE OF SERVICE

my commission expires March 19, 2007

I hereby certify that I have served a copy of this matter on all parties involved, by placing a copy of the same in the institutional mailbox, pre-paid, postage 1st class mail.

Done this 29th day of June 2005

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2005 JUL -1 PM 1:04

COPY TO CRIMINAL APPEALS ON 07-11-05

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State of Alabama
Unified Judicial System
Form ARAP-1C 8/91

REPORTER'S TRANSCRIPT ORDER -- CRIMINAL

See Rules 10(c) and 11(b) of the
Alabama Rules of Appellate Procedure (A.R. App.P.)

Criminal Appeal Number

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF MONTGOMERY COUNTYJAMES EDWARD BODY, AppellantV. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF _____

Case Number

CV-05-652

Date of Judgment/Sentence/Order

5-29-05

Date of Notice of Appeal

Oral:

Written:

YES

Indigent Status Granted:

☒ Yes☐ No

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

Signature

Date

Print or Type Name

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R.App.P.)):

MARK PROCEEDINGS REQUESTED:

COURT REPORTER(S)

- A. ☐ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☐ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)
- C. ☐ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY)

ADDITIONAL PROCEEDINGS REQUESTED

DATE

COURT REPORTER(S)

D. _____

E. _____

F. _____

G. _____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R.App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Signature

Date

Print or Type Name

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals; (2) the District Attorney, (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney and the Attorney General if the appeal is from a municipal conviction, and (4) to each Court Reporter who reported proceedings designated for inclusion in the reporter's transcript.

State of Alabama
Unified Judicial System
Form ARAP- 26 (front) 8/91

**COURT OF CRIMINAL APPEALS
DOCKETING STATEMENT**

Criminal Appeal Number _____

A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF Montgomery COUNTY
James Edward Body, Appellant

v. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF _____

Case Number <u>CV-05-652</u>	Date of Complaint or Indictment <u>4-12-05</u>	Date of Judgment/Sentence/Order <u>5-24-05</u>
Number of Days of Trial/Hearing <u>21</u> Days	Date of Notice of Appeal Oral: <u>6-29-05</u>	Written: <u>YES</u>
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

B. REPRESENTATION:

Is Attorney Appointed or Retained? <input type="checkbox"/> Appointed <input type="checkbox"/> Retained.	If no attorney, will appellant represent self? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>JAMES Edward Body</u>	Telephone Number _____
Address <u>200 Wallace Dr. C/110</u>	State <u>AL</u> Zip Code <u>36117</u>

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant	Case Number
Codefendant	Case Number
Codefendant	Case Number

D. TYPE OF APPEAL: Please check the applicable block.

- | | | | |
|---|--|--|--|
| 1 <input type="checkbox"/> State Conviction | 4 <input type="checkbox"/> Pretrial Order | 7 <input type="checkbox"/> Juvenile Transfer Order | 10 <input checked="" type="checkbox"/> Other (Specify) |
| 2 <input type="checkbox"/> Post-Conviction Remedy | 5 <input type="checkbox"/> Contempt Adjudication | 8 <input type="checkbox"/> Juvenile Delinquency | <u>CEATIONAL</u> |
| 3 <input type="checkbox"/> Probation Revocation | 6 <input type="checkbox"/> Municipal Conviction | 9 <input type="checkbox"/> Habeas Corpus Petition | |

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- | | | |
|---|--|--|
| 1 <input type="checkbox"/> Capital Offense - § _____ | 6 <input type="checkbox"/> Trafficking in Drugs - § _____ | 11 <input type="checkbox"/> Fraudulent Practices - § _____ |
| 2 <input type="checkbox"/> Homicide - § _____ | 7 <input type="checkbox"/> Theft - § _____ | 12 <input type="checkbox"/> Offense Against Family - § _____ |
| 3 <input type="checkbox"/> Assault - § _____ | 8 <input type="checkbox"/> Damage or Intrusion to Property - § _____ | 13 <input type="checkbox"/> Traffic - DUI - § _____ |
| 4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____ | 9 <input type="checkbox"/> Escape - § _____ | 14 <input type="checkbox"/> Traffic - Other - § _____ |
| 5 <input type="checkbox"/> Drug Possession - § _____ | 10 <input type="checkbox"/> Weapons/Firearms - § _____ | 15 <input type="checkbox"/> Miscellaneous (Specify): _____ |

F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

G. TRANSCRIPT:

- Will the record on appeal have a reporter's transcript? ☒ Yes ☐ No
- If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. 7-11-05 (Date)
- If the answer to question "1" is "No":
 - Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☒ No
 - Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☒ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

Form ARAP-26 (back) 8/91

COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
4	12	05	PETITION FOR WRIT OF HABEAS CORPUS	5	24	05
5	13	05	STATE'S RESPONSE	5	24	05
5	26	05	PETITIONER'S RESPONSE	5	24	05

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

This is an ORDER from the order to dismiss a writ of certiorari.

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

To be determined upon receiving the record on appeal

K. SIGNATURE:

Date

Signature of Attorney/Party Filing this Form

REV. 4/1/97

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**NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS
BY THE TRIAL COURT CLERK**

James Edward Boddy
APPELLANT'S NAME

(as it appears on the indictment)

v.

Al. Board of Pardons & Paroles
APPELLEE

☒ CIRCUIT ☐ DISTRICT ☐ JUVENILE COURT OF Montgomery COUNTY
CIRCUIT/DISTRICT/JUVENILE JUDGE: Shaskey

DATE OF NOTICE OF APPEAL: 06/29/05

(NOTE: If the appellant is incarcerated and files notice of appeal, this date should be the date on the certificate of service, or if there was no certificate of service, use the postmark date on the envelope.)

INDIGENCY STATUS:

Granted Indigency Status at Trial Court:
Appointed Trial Counsel Permitted to Withdraw on Appeal:
Indigent Status Revoked on Appeal:

☒ Yes ☐ No
☐ Yes ☐ No N/A
☐ Yes ☒ No

DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed?

☐ Yes ☒ No

TYPE OF APPEAL: (Please check the appropriate block.)

☐ State Conviction ☐ Pretrial Appeal by State ☐ Juvenile Transfer Order
☐ Rule 32 Petition ☐ Contempt Adjudication ☐ Juvenile Delinquency
☐ Probation Revocation ☐ Municipal Conviction ☐ Habeas Corpus Petition
☐ Mandamus Petition ☒ Writ of Certiorari ☐ Other(specify) _____

IF THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC.) OR FROM ANY OTHER ORDER ISSUED BY THE TRIAL JUDGE, COMPLETE THE FOLLOWING:

TRIAL COURT CASE NO.: CV 05-652

DATE ORDER WAS ENTERED: 06/30/05

PETITION: ☒ Dismissed ☐ Denied ☐ Granted

IF THIS IS AN APPEAL FROM A CONVICTION, COMPLETE THE FOLLOWING:

DATE OF CONVICTION: _____ DATE OF SENTENCE: _____

YOUTHFUL OFFENDER STATUS:

Requested: ☐ Yes ☐ No Granted: ☐ Yes ☐ No

LIST EACH CONVICTION BELOW: (attach additional page if necessary)

1. Trial Court Case No. _____ CONVICTION: _____
Sentence: _____
2. Trial Court Case No. _____ CONVICTION: _____
Sentence: _____
3. Trial Court Case No. _____ CONVICTION: _____
Sentence: _____

POST-JUDGMENT MOTIONS FILED: (complete as appropriate) Date Filed Date Denied Continued by Agreement To (Date)

☐ Motion for New Trial _____
☐ Motion for Judgment of Acquittal _____
☐ Motion to Withdraw Guilty Plea _____
☐ Motion in Arrest of Judgment _____
☐ Other _____

COURT REPORTER(S): Mary King
ADDRESS: Montgomery County Courthouse

APPELLATE COUNSEL: _____
ADDRESS: _____

APPELLANT: (IF PRO SE)..... AIS# 144883 James E. Boddy
ADDRESS: Eastling Cor. Fac - 200 Wallace Dr.

APPELLEE (IF CITY APPEAL):...
ADDRESS: Chlo, Al 36107-2615

I certify that the information provided above is accurate to the best of my knowledge and I have served a copy of this Notice of Appeal on all parties to this action on this 11th day of June, 2005.

Melissa Bittencourt
CIRCUIT COURT CLERK

COPY TO CRIMINAL APPEALS ON 07-11-05

State of Alabama Unified Judicial System From ARAP - 14 Rev. 11 / 91	CERTIFICATE OF COMPLETION AND TRANSMITTAL OF RECORD ON APPEAL BY TRIAL CLERK	Appellate Case Number
TO: THE CLERK OF THE COURT OF CRIMINAL APPEALS OF ALABAMA		DATE OF NOTICE OF APPEAL: 06-29-05
APPELLANT JAMES EDWARD BODY		
v. STATE OF ALABAMA ALABAMA BOARD OF PARDONS AND PAROLES		
<p>I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of <u>73</u> pages) (<u> </u> volumes of 200 pages each and one volume of <u> </u> pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of brief.</p> <p>I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.</p> <p>DATED this <u>27th</u> day of <u>JULY</u>, <u>2005</u>.</p> <p><u>Melissa Rittenour</u> Circuit Clerk</p>		